



ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: XI

DATE: Monday, June 6th, 1988

BEFORE:

M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member

FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council
(O.C. 2449/87) authorizing the
Environmental Assessment Board to
administer a funding program, in
connection with the environmental
assessment hearing with respect to the
Timber Management Class
Environmental Assessment, and to
distribute funds to qualified
participants.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St.
Thunder Bay, Ontario, on Monday,
June 6th, 1988, commencing
at 1:00 p.m.

VOLUME XI

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

MR. V. FREIDIN)	MINISTRY OF NATURAL
MS. C. BLASTORAH)	RESOURCES
MS. K. MURPHY)	
MR. B. CAMPBELL)	MINISTRY OF ENVIRONMENT
MS. J. SEABORN)	
MR. R. TUER)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
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	and WINDIGO TRIBAL
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MR. B. McKERCHER)	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	

APPEARANCES: (Cont'd)

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MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
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APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>RICHARD M. MONZON,</u> <u>LARRY A. DOUGLAS</u> , Resumed	1843
Cross-Examination by Ms. Seaborn	1847
Re-Direct Examination by Mr. Freidin	1873

I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
50	Management Chart prepared by Mr. Douglas.	1847
51	Management Chart prepared by the Ministry of the Environment.	1853
52	26-page document Re: Question 1 and Question 3 to an Interrogatory of Nishnawbe-Aski Nations and attachment referred to in answer to Question 3 entitled: Excerpt of Main Events in Native Communities.	1910

1 ---Upon commencing at 1:05 p.m.

2 THE CHAIRMAN: Good afternoon, ladies and
3 gentlemen. Please be seated.

4 I guess this is the first day that we have
5 required the air conditioning on and I do not know what
6 kind of problems are going to develop in terms of the
7 sound.

8 Can everybody hear from down there?

9 (No response)

10 All right. I guess we are going to ask
11 everyone today to speak up. If it turns out to be a
12 major problem, we may have to get them to cut it down
13 and, if things heat up in here, we may doff the coats
14 at some stage of the game throughout the summer; we
15 will see.

16 Ladies and gentlemen, before we get
17 started there are a couple of matters that I want to
18 indicate to you that the Board will be dealing with
19 and, that is: Subsequent to the re-examination by Mr.
20 Freidin, which hopefully we will complete today, we are
21 going to return to the issue that we disposed of, more
22 or less, the last time we sat and, that is, the
23 distinction between forest management and timber
24 management.

25 And I believe, Mr. Castrilli, you

1 reserved the right to comment further once you had
2 received instructions.

3 MR. CASTRILLI: Yes, that's correct, Mr.
4 Chairman.

5 THE CHAIRMAN: And also I believe Mr.
6 Edwards - who I do not see here today - also reserved
7 that right. So if he shows up later, we will try and
8 deal with that as well.

9 The second matter that I think the Board
10 would like to deal with is this: We are going to put a
11 proposal to counsel towards the end of the day on a way
12 in which to expedite the hearing of the direct evidence
13 in connection with the proponent's case and/or other
14 parties.

15 We have given it some considerable
16 thought in terms of how we might expedite the hearing
17 of evidence, at least the direct evidence, and then the
18 cross-examinations would probably have to proceed in
19 the normal fashion; but, we will put that to you
20 towards the end of the day for your consideration with
21 perhaps setting Wednesday morning as a time for the
22 parties to respond to the Board's proposal.

23 And our proposal will probably apply not
24 to this witness panel, not to the following witness
25 panel, or even the one after that, but perhaps the

1 fourth witness panel and that is because if it requires
2 a change in the way the proponent might present its
3 witness statements - we will go into this later on - we
4 would like to be able to give the proponent an
5 opportunity to accommodate those changes.

6 I think with respect to those two matters
7 that completes the preliminaries the Board would like
8 to deal with at this time.

9 Are there any other preliminary matters
10 before we get into the evidence at hand?

11 Mr. Castrilli?

12 MR. CASTRILLI: Actually, it is a matter
13 that can wait until the end of the day as well. It is
14 With respect to the issue of undertakings given during
15 the first panel's evidence that have not yet been
16 answered.

17 THE CHAIRMAN: I see. And I take it you
18 and the proponent have had conversations over these
19 undertakings?

20 MR. CASTRILLI: Yes. I provided Mr.
21 Freidin with a list of the undertakings, as I
22 understand them, and we are going to speak during the
23 break this afternoon.

24 THE CHAIRMAN: Okay. I think the
25 appropriate procedure, as I am sure counsel is aware,

1 is that if there is a problem in having undertakings
2 dealt with expeditiously, the party to whom the
3 undertaking is made should be speaking with the party
4 who made the undertaking, try to sort it out in advance
5 and, if you cannot sort it out, then apply to the
6 Board, as I take it you are doing, and we will try and
7 sort it out for you.

8 Okay. Ms. Seaborn, are you ready to go?

9 MS. SEABORN: Yes, thank you, Mr.

10 Chairman.

11 ---Discussion off the record.

12 THE CHAIRMAN: Oh, I am sorry, that's
13 correct.

14 If we could just hold you down for a
15 minute. I think Mr. Douglas was going to explain the
16 chart that he formulated the last time and we never got
17 around to it; is that correct?

18 MR. DOUGLAS: Yes, and somehow through
19 the break it got demolished so we did another one.

20 RICHARD M. MONZON,
21 LARRY A. DOUGLAS, Resumed

22 MR. DOUGLAS: This chart here refers to a
23 number of questions that Mr. Martel raised. I believe
24 there was a question of the fact that we use the term
25 guidelines for a number of documents that the Ministry

1 produces, and some of those documents are essentially
2 manuals for preparing plans and, unfortunately, one of
3 the results is also called a guideline. So it is
4 understandable that there was some degree of confusion.

5 What I would like to try to do very
6 quickly is to indicate which manuals apply to the
7 various types of plans that we have described to the
8 Board.

9 MR. FREIDIN: Mr. Douglas, I am just
10 wondering whether you could stand on the other side of
11 the exhibit so that we can all see.

12 MR. DOUGLAS: Mr. Monzon described
13 Strategic Land Use Plans, he described District Land
14 Use Guidelines, and we have identified resource
15 management plans, such as the timber management plans,
16 as those plans that are prepared at the resource
17 management planning level, and I refer you to Exhibit
18 No. 14.

19 Now, there's three manuals in effect
20 which direct people preparing these various plans and
21 guidelines about how to go about it. And, in a very
22 general sense, those manuals talk about planning
23 principles, planning steps or procedures and, to some
24 extent, the roles and responsibilities of the parties
25 in the process.

1 Mr. Monzon described the Guidelines for
2 Land Use Planning, 1980; I believe there was seven
3 principles under those. Those guidelines are intended
4 to provide direction for development of the Strategic
5 Land Use Plans as well as the District Land Use
6 Guidelines and, as Mr. Monzon indicated, these
7 documents get updated over time and the 1980 ones were
8 refinements of the 1974 ones, both of which were shown
9 in the witness documents.

10 So the Guidelines for Land Use Planning
11 give direction for strategic land use planning and
12 district land use planning.

13 I also described a document called The
14 Framework for Resource Management Planning, 1986, and I
15 spent a fair amount of time talking about the
16 principles, planning steps and planning procedures in
17 there. That document gives general direction for
18 preparing resource management plans, such as timber
19 management plans.

20 And, based on the Framework for Resource
21 Management Planning, a number of other manuals are
22 prepared and these manuals tend to be quite detailed
23 and specific, and the Timber Management Planning Manual
24 is one of those.

25 And from those -- either in the case

1 where there's a specific manual in place then, in that
2 case, that directs how a resource management plan is
3 prepared, whether we were talking about the Timber
4 Management Planning Manual outlining how timber
5 management is to be prepared; or the Fisheries
6 Management Planning Manual which indicates how
7 fisheries management is to be undertaken.

8 Also, as I indicated, when there's no
9 particular specific manual in place, the general
10 direction from the Framework is applied to the
11 development of resource management plans. And maybe I
12 should put a dashed line in there to indicate that.

13 Once a resource management plan is
14 prepared and approved it sets out direction for
15 carrying out operations, activities and projects. So
16 that is the operations level.

17 So, essentially, we have two sides here:
18 One is what I call the requirement side, and that
19 indicates how to prepare these various plans at
20 different levels; and on the output you have different
21 outputs: land use plans and guidelines, resource
22 management plans leading to actual on-the-ground
23 operations.

24 Now, if you wish, Mr. Chairman, I will put
25 an exhibit number on this.

1 THE CHAIRMAN: I think it is Exhibit 50.

2 Thank you. We will call that a
3 Management Chart prepared by Mr. Douglas.

4 MR. DOUGLAS: Yes.

5
6 ---EXHIBIT NO. 50: Management Chart prepared by Mr.
Douglas.

7 THE CHAIRMAN: Thank you.

8 Ms. Seaborn?

9 MS. SEABORN: Thank you, Mr. Chairman.

10 CROSS-EXAMINATION BY MS. SEABORN:

11 Q. Mr. Monzon, in your
12 examination-in-chief you gave evidence as to how
13 targets that are contained in the Strategic Land Use
14 Plans are arrived at.

15 Do you recall that evidence?

16 MR. MONZON: A. Yes, I do.

17 Q. And, in particular, that evidence
18 appears at Volume III of the transcript beginning at
19 page 433. If I could just paraphrase for you what I
20 recall the evidence being.

21 Now, you told us that the target-setting
22 process is based upon original information and raw data
23 that's compiled at the district level?

24 A. That's correct.

25 Q. And then you take the information

1 from the various districts and that's brought together
2 at the regional level?

3 A. That's correct.

4 Q. And then you said that there may be
5 some modifications at the region or the provincial
6 level as a result of factors that may not have been
7 considered at the district level; is that correct?

8 A. That's correct.

9 Q. And I believe the example you gave of
10 a factor that would not be considered at the district
11 level would be the impact of world demand relative to
12 hardwood pulp?

13 A. Yes.

14 Q. And then you told us that those
15 targets are then reassigned back down to the management
16 unit level?

17 A. Back down to the district level,
18 sorry.

19 Q. Okay. So you would take something,
20 it would go down to the district level from the
21 regional level?

22 A. Yes.

23 Q. And then back down to the management
24 unit level?

25 A. Yes, given that there was a direct

1 linkage that could be made, yes.

2 Q. And I guess I would characterize this
3 process as one where the targets would go up the chain
4 to the provincial level and then you would see them
5 come back down and reassigned again at the management
6 unit level?

7 A. Yes, that would be a fair
8 characterization.

9 Q. Would you agree with me that there's
10 not only -- that there's not an even quality of
11 information; that is, that for some resources you have
12 better information than you do for other resources?

13 A. Yes, generally that's true.

14 Q. And would it be fair to say that the
15 inventory information that you are passing from the
16 field, plus perhaps an estimation of what could be
17 produced for various resources if certain management
18 actions were taken -- perhaps I will put it a different
19 way. That information is inventory information that's
20 being passed--

21 A. Yes.

22 Q. --at the management level?

23 A. Yes, there is inventory information
24 broken down into different categories, such as present
25 use, such as potential, such as demand.

1 Q. And you would have different quality
2 of inventory information for different resources;
3 quality and quantity?

4 A. Different quality, quantity might be
5 be described differently, that's true.

6 Q. And would you agree with me that
7 management actions themselves can influence both the
8 quality of resource information and the quantity of
9 resource information?

10 A. Well, certainly as you get closer to
11 making a management decision, there will be instances
12 where you will need to -- or could need to include the
13 quality of your inventory information, so you would
14 enhance that before undertaking -- in some cases, you
15 would enhance that information before undertaking a
16 decision.

17 Also, I think perhaps more to the point
18 that you are getting at, once one has a certain degree
19 of experience in working with a resource in a
20 particular situation, there is some experience gained
21 as to logical outcome.

22 Q. So once all the inventory data would
23 be gathered the next step would be to have a look at
24 all that inventory and then you would have to make some
25 choices as to what management efforts will be made in

1 relation to those specific resources?

2 A. Yes, that's correct. And part of
3 that management effort would be looking at the cross
4 impact on the various resources of particular
5 management efforts on one resource.

6 Q. So that process would involve
7 tradeoffs; wouldn't it?

8 A. Yes.

9 Q. And you would agree with me that the
10 exercise of making those tradeoffs is really what
11 planning is all about?

12 A. That's correct. As we have attempted
13 to describe, I think throughout the evidence, that what
14 we are looking for through planning is optimizing the
15 best use of the land and water base to achieve
16 objectives.

17 Q. And good planning involves a high
18 degree of judgment; does it not?

19 A. Yes, I would think so.

20 Q. And, like all exercises in judgment,
21 would you agree with me that people may come to
22 different conclusions as to what plans should be
23 adopted; that is, what management actions should be
24 taken in respect of each resource?

25 A. Yes, that's correct.

1 Q. So if I could just summarize how I
2 understand MNR's planning framework, we have broad
3 policy choices are made at the senior level first?

4 A. Yes.

5 Q. And those are then translated into
6 district policies?

7 A. Translated down through our chain of
8 command to be put into operation at the district level.

9 Q. And then these are, in turn,
10 translated into resource management plans of which, for
11 example, a timber management plan is one sort?

12 A. Yes, that's correct.

13 Q. Thank you.

14 Mr. Douglas, following along from your
15 chart, we as well have been trying to understand MNR's
16 planning process and I have prepared an overhead chart
17 that I would like to ask you some questions about.

18 MS. SEABORN: I have copies for the Board
19 so that we can mark it as the next exhibit.

20 THE CHAIRMAN: Exhibit No. 51.

21 Mr. Monzon, would it be possible to move
22 out the screen just a little bit so that it is slanted
23 over here.

24 Thank you.

25 Ms. Seaborn, we will entitle this the

1 Management Chart prepared by the Ministry of the
2 Environment.

3 MS. SEABORN: Thank you, Mr. Chairman.
4 Exhibit 51?

5 THE CHAIRMAN: Yes.

6 ---EXHIBIT NO. 51: Management Chart prepared by the
7 Ministry of the Environment.

8 MS. SEABORN: Q. Mr. Douglas, do you
9 recall that we initially prepared a chart that we
10 submitted to the Ministry of Natural Resources as one
11 of our Panel 1 interrogatories?

12 MR. DOUGLAS: A. Correct.

13 Q. And, in response to that
14 interrogatory, MNR suggested some specific changes to
15 this planning framework that we have set out and we
16 incorporated those changes; is that correct?

17 A. Yes, trying to go through all the
18 arrows.

19 Q. Now, I haven't really got to this
20 version yet.

21 A. Okay.

22 Q. But we incorporated those changes and
23 then, prior to you giving evidence in-chief, we met
24 with you and looked at the changes that we had made to
25 our version of the chart and you told us that you would

1 like to see something done in a format such as this
2 where we showed a product and a process description.

3 A. That's correct. The three parts:
4 The policy context, sort of the how to, and then the
5 product or the output.

6 Q. And just comparing this to the
7 document you did by hand for Mr. Martel, would your
8 requirement side be equivalent to the product side that
9 I had indicated?

10 A. No, that would be the output side.

11 Q. Okay, I'm sorry. The process
12 description would be equivalent to the requirement side
13 and then the product side would be equivalent to the
14 output side, in general a sense?

15 A. In a general sense, yes.

16 Q. We will get into the specifics.

17 If we could just have a look at the
18 product portion of the chart. We have talked a lot
19 about these boxes on the left-hand side of the document
20 and starting at the top left-hand box there's Strategic
21 Land Use Plans.

22 A. Yes.

23 Q. Of which we have indicated three:
24 The Northwest SLUP, the Northeast SLUP and the Southern
25 Ontario Land Use Plan?

1 A. The Southern Ontario Co-ordinated
2 Program Strategy, yes.

3 Q. And then below the SLUPS I have put
4 in a box called District Land Use Planning Guidelines.

5 A. Correct. There should be an arrow
6 from the land use -- Guidelines for Land Use Planning
7 up to the Strategic Land Use Plans as well. You had an
8 arrow going down. You should have one going up as
9 well.

10 Q. Okay, we will get to that in a
11 moment.

12 And, as I understand your Framework, the
13 product from the SLUPS and the DLUGS would then be a
14 specific resource management plan, one of which I have
15 highlighted as a timber management plan?

16 A. Correct, realizing that the linkages
17 are more precise in some cases than others.

18 Q. And then along the bottom of the
19 chart I have listed a number of other resource
20 management plans and those resource management plans
21 are on the same level as the timber management plan.

22 A. Yes.

23 Q. Is that correct?

24 And, for example, the provincial park
25 management plans, district fisheries management plans

1 and numerous others.

2 A. Yes, it is generally correct. I
3 would have to go through it, but that's generally
4 correct.

5 Q. Well, we will get to the source for
6 those later. And, again, these management plans would
7 be products of the DLUGS?

8 A. Well, I am not sure that they would
9 all be direct products, but generally that's the
10 different levels as they come down.

11 Q. And then on the left-hand side of the
12 chart I have a heading called Level of Approval.

13 A. Yes.

14 Q. And underneath Level of Approval it
15 is at the Deputy Minister level for Strategic Land Use
16 Plans?

17 A. That's the minimum, yes. The
18 Minister in 1982 did approve those three, but the
19 Deputy is the minimum level.

20 Q. And then the regional director or the
21 district manager is involved in the approval of the
22 District Land Use Planning Guidelines?

23 A. The regional director approves what
24 the district manager recommends, so the approval level
25 there is the regional director.

1 Q. And then there's the same approval
2 level at the resource management plan where, again, the
3 regional director, the district manager and then
4 perhaps the director of Timber Sales Branch are
5 involved in approvals of those resource management
6 plans?

7 A. Yes, that's generally correct.

8 Q. If we can move along the chart from
9 left to right, under Process Description there are
10 circular corners around the Guidelines for Land Use
11 Planning, 1980.

12 A. Right.

13 Q. And then below that there is the
14 document that was introduced as part of your evidence,
15 A Framework for Resource Management Planning in MNR
16 which was provided in 1986?

17 A. Correct.

18 Q. And then, again, there's a box for
19 the Timber Management Planning Manual for Crown Lands,
20 which is Exhibit 7 in these proceedings?

21 A. Correct.

22 Q. And then there's another circular
23 corner around General Resource Management -- sorry,
24 Resource Planning Manuals.

25 A. Correct.

1 Q. And these manuals would be the
2 equivalent to the Timber Management Planning Manual for
3 Crown Lands?

4 A. Yes, they do vary in level of detail.
5 Certainly the ones for fisheries is equivalent to the
6 Timber Management Planning Manual.

7 Q. And, in a nutshell, would it be fair
8 to say that the planning documents that I have just
9 listed under Process Description represent instructions
10 given to the planner?

11 A. Yes, those documents -- the
12 Guidelines for Land Use Planning, A Framework for
13 Resource Management Planning and the major manuals all
14 have corporate policy approval.

15 Q. In the far right-hand side of Exhibit
16 51 there's a heading Policy Context.

17 A. Correct.

18 Q. And we have listed three major
19 policies: Integrated Resource Management Philosophy,
20 Sustained Yield Policy, and Forest Production Policy.

21 A. Correct.

22 Q. And these policies would apply to all
23 levels of the planning framework; would they not?

24 A. Yes. I would like to clarify,
25 though, that if you are talking about those three

1 policies affecting the Strategic Land Use Guidelines,
2 for example, there are many other policies that would
3 affect those Strategic Land Use Plans, so it would be
4 broader than that.

5 But if you want to interpret Integrated
6 Resource Management and some of the principles in there
7 which basically says that all government policies are
8 taken into account then, with that kind of
9 interpretation, I can accept it.

10 Q. I just wanted to draw your attention
11 to the Environmental Assessment, at page 95. Do you
12 have that in front of you?

13 A. Yes, I do.

14 Q. The bottom line on page 95.

15 MS. SEABORN: This, Mr. Chairman, would
16 be page 95 of the main text of the EA rather than the
17 summary pages.

18 Q. And, Mr. Douglas, it says at the
19 bottom of page 95:

20 "Three policies have been formulated to
21 provide direction for the achievement of
22 MNR's provincial forest resources program
23 objective. These policies are: No. 1,
24 Sustained Yield Management; No. 2, Forest
25 Production Policy; and, No. 3, Integrated

1 Resource Management Policy."

2 MR. DOUGLAS: A. That's correct.

3 Q. Those are the three main policies
4 that you have, again filed, in your environmental
5 assessment as being the driving force or critical to
6 MNR's planning process?

7 A. In respect to timber management and
8 the purpose of the undertaking as we've defined it.

9 Q. Thank you.

10 Now, just continuing on with respect to
11 the policies, and if you could just refer to the DLUG
12 level of the chart.

13 Would you agree with me that there are
14 really three major inputs into the District Land Use
15 Guidelines, and the first one, that I would
16 characterize, is that they must be consistent with the
17 Strategic Land Use Plans?

18 A. That's generally correct, yes.

19 Q. And the process that's used to arrive
20 at the District Land Use Guidelines are the 1980
21 Guidelines for Land Use Planning?

22 A. Correct.

23 Q. And that the three major policies
24 that we have just identified must be kept in mind when
25 you are formulating a specific DLUG?

1 A. Dealing with the timber section, yes.

2 Q. Thank you.

3 And if we just go down to the next level
4 looking at the timber management plan box. Again,
5 would you agree with me that a timber management plan
6 must be consistent with the DLUG that refers to that
7 plan?

8 A. Yes, it generally must be consistent.
9 Although, realizing that in the case of timber
10 management plans there could be two or three or four
11 units within a single district, consequently, you might
12 have some variance in one of the plans, but that would
13 still -- it still should be accurate at the district
14 level.

15 Q. And the process that you would use to
16 arrive at the timber management plan would be following
17 the procedures contained in the Timber Management
18 Planning Manual for Crown Lands?

19 A. The Timber Management Planning Manual
20 would be the basis for preparing the timber management
21 plan, yes.

22 Q. And, again, the three major policies
23 that someone preparing a timber management plan would
24 have to keep in mind would be Integrated Resource
25 Management Philosophy, Sustained Yield and Forest

1 Production Policy?

2 A. Yes. I would like to clarify again,
3 though, that those are the three things that derive the
4 development of the timber management component.

5 In developing the plans, though, one must
6 take into account other policies that exist, whether
7 they are provincial or otherwise, for example,
8 fisheries, moose, the various ones.

9 So in terms of undertaking timber
10 management, it is necessary to have regard for all
11 these other policies which may be impacted upon by
12 proposed activities that are considered in the timber
13 management plan.

14 Q. But, generally speaking, because we
15 are in the timber area, it would be those three
16 policies that would be the driving policies, other than
17 a fisheries policy?

18 A. In terms of formulating it in the
19 context of the purpose of this undertaking, yes.

20 Q. And, Mr. Douglas, you would agree
21 with me that planning choices had to be made at the
22 Strategic Land Use Plan level?

23 A. That's correct.

24 Q. And that involved judgment when those
25 plans were written?

1 A. Yes, it did.

2 Q. And different people may make
3 different choices in exercising their judgment?

4 A. Yes. And, even with the same data,
5 different people will make different choices.

6 Q. And would you agree with me that one
7 of the planning directives at the District Land Use
8 Guideline level is that choices that are already made
9 at the Strategic Land Use Plan level should be
10 reflected in the DLUG?

11 A. They must be taken into account and
12 followed, unless there is sound, specific reasons for
13 not doing so.

14 Q. But, generally speaking, that is how
15 the process is set up to work?

16 A. Yes, that's correct.

17 Q. And, again, you would agree with me,
18 wouldn't you, that at the District Land Use Guideline
19 level, again, planning choices are made?

20 A. That's correct.

21 Q. And, again, different people may make
22 different choices when formulating a District Land Use
23 Guideline?

24 A. That's correct.

25 Q. And if there are some problems at the

1 DLUG level, you may -- through the way the planning
2 process is set up, you may find yourself in a position
3 of having to refine SLUPS; is that correct?

4 A. You can run into the situation at the
5 more detailed resource management planning level where
6 you need to go back and amend the District Land Use
7 Guidelines.

8 Q. And at the resource management
9 planning level, the same principles apply in that
10 choices that you have already made at the District Land
11 Use Guideline level should be reflected in a resource
12 management plan?

13 A. Yes, subject to the qualification
14 that analysis at a more detailed level may indicate the
15 need for some amendments or some special provisions in
16 a specific location.

17 Q. But, generally speaking, that is the
18 way the process is set up?

19 A. Generally, yes.

20 Q. Thank you.

21 And at the resource management plan
22 level, a different group of people may make different
23 judgments based on the same information. Would you
24 agree with that proposition?

25 A. Yes, that is possible. But in terms

1 of the people who are responsible for making the
2 recommendation up for approval of the District Land Use
3 Guidelines and resource management plans it is the same
4 person, it is the district manager. So both the land
5 use guidelines and the resource management plans go
6 through that one person.

7 Q. Now, according to the process
8 description in the Framework for Resource Management
9 Planning and the Timber Management Planning Manual at
10 the resource management plan level, again, you may need
11 to make refinements or alterations at the DLUG level if
12 there is a problem at the resource management planning
13 manual level?

14 A. That's correct.

15 Q. And this would apply specifically to
16 situations where there is a problem in meeting targets
17 that are set out in the DLUGS?

18 A. Either a problem or, in some cases,
19 you find an opportunity at the resource management
20 planning level that wasn't identified at the more
21 general level. So you both find problems and you find
22 opportunities.

23 Q. So if we look vertically at the
24 Product column on Exhibit 51, the various planning
25 process documents contemplate that at the stage of

1 timber management plans there may be refinements
2 required to the DLUG level, and possibly the SLUP
3 level, that would result in changes to timber
4 management plans?

5 A. Yes. Once you prepare, say, either a
6 single or a significant number of timber management
7 plans you may decide that it's necessary to go back and
8 change the District Land Use Guideline, or if you seem
9 to be in a merging situation across the province, you
10 may in fact go all the way up the system and decide
11 that it's necessary to review the provincial policy.

12 As I indicated in Exhibit 14, all of
13 those arrows are linked, so you would -- if you found a
14 situation at the resource management plan that was out
15 of kilter with the District Land Use Guidelines, the
16 first instinct would be to look at the Land Use
17 Guideline.

18 On the other hand, if you found it was a
19 merging situation across several districts, then one
20 would probably want to look at some of the assumptions
21 on which the overall policy is based.

22 Q. Would you agree with me then that
23 when this Board looks at SLUPS and DLUGS, the Board
24 should take into account that they are part of a
25 refinement process and that preparation of timber

1 management plans could result in changes to the DLUGS
2 and the SLUPS?

3 A. Yes, we have indicated that in our
4 evidence.

5 Q. I just want to focus for a moment on
6 the horizontal line across the bottom of Exhibit 51
7 where we have set out a number of different resource
8 management plans, and if you could just turn as well to
9 page 196 of the Panel 1 evidence which is Exhibit 6.

10 A. Yes, I have it.

11 Q. And at the top of page 196 there is a
12 heading called Category A.

13 A. Yes.

14 Q. The reason why I am bringing this to
15 your attention is that in initially reviewing the Panel
16 1 evidence this is where I was able to ascertain what
17 other kinds of management plans would be put together
18 by MNR.

19 The top paragraph says:

20 "The types of plans produced by or for
21 MNR that fall under the general
22 description of resource management plan
23 and to which this framework applies
24 include..."

25 And then there is a category of them, and

1 I recall that when we discussed this previously in the
2 interrogatory you advised us to add in shoreline
3 management plans to this list.

4 A. Yes, that was recently developed
5 based on the concern over the Great Lakes shoreline
6 erosion and the development of a policy in that
7 context.

8 Q. I just want to focus for a moment on
9 these resource management plans in terms of your
10 Integrated Resource Management Philosophy.

11 You would agree with me that in planning
12 for a single resource you have to take into account and
13 make tradeoffs with each of the other resources?

14 A. That's correct, you have to take into
15 account many points of view.

16 Q. And in making tradeoffs between
17 resources is a critically important part of the
18 resource management planning process; is it not?

19 A. Yes, it is.

20 Q. And planning is a judgment process?

21 A. There is a fair element of judgment,
22 yes.

23 Q. And I take it from your earlier
24 evidence that you would agree with me that different
25 people on the same information might reach a different

1 conclusion as to what is the best tradeoff?

2 A. That is possible, yes.

3 Q. Well, isn't that correct? If you
4 have people who are making judgments and looking at
5 information, it's quite often that they are going to
6 reach a different conclusion as to what the tradeoff is
7 going to be?

8 A. The reason I qualified my statement
9 was that, in some cases, there will be differences, but
10 they won't be significant differences.

11 In terms of having a policy, a policy
12 sets the context for making those decisions and those
13 tradeoffs and, with any general provincial policy, when
14 you take it down to a site-specific basis, there is an
15 element of judgment in terms of interpreting that to a
16 site-specific situation.

17 Q. But when people get together to look
18 at these different resources, depending on their
19 backgrounds and their focus and their biases, different
20 people are bound to come to different conclusions about
21 how a resource should be treated?

22 A. That is possible, but this is the
23 reason why, in terms of the review processes for the
24 resource management plans, that we make sure that that
25 goes through an interdisciplinary team that is reviewed

1 at both the district and the regional levels, to try to
2 take out what you refer to as an individual -- or
3 possible individual bias.

4 Q. Well, not looking at any review
5 process in terms of the check - I understand that your
6 evidence is that there is a check later in terms of
7 these plans by it going up again to a higher level -
8 but when you have these people working at the resource
9 management unit level, isn't it more probable than
10 possible that people are going to come to different
11 conclusions as to how they should make the tradeoffs
12 between the resources?

13 A. Most definitely possible.

14 Q. So would you agree with me that when
15 the Board, later in the hearing process, looks
16 specifically at the timber management planning process,
17 it would have to satisfy itself that the process is
18 appropriately structured to permit a tradeoff which
19 says: Cut this stand of timber, but must allow the
20 possibility of a decision that would be not to cut a
21 specific stand of timber?

22 A. That process would have to permit
23 that eventuality either way.

24 Q. And would you agree with me that some
25 of the reasons for not going ahead and cutting timber

1 may well be because of a reason that is beyond MNR's
2 mandate? Would you agree with that?

3 A. Yes, we take into account the
4 policies of various ministries, such as yours.

5 Q. There is just one other question I
6 have, Mr. Douglas.

7 The Timber Management Planning Manual for
8 Crown Lands is filed as Exhibit 7, and in the front of
9 my copy I have an update notice register, the last
10 entry of which is February 15th, 1988.

11 A. Yes.

12 Q. I am wondering if you could advise
13 me - or perhaps Mr. Freidin can advise us at a later
14 date - whether the manual has been updated since
15 February, 1988 and, if so, if during the course of this
16 hearing we will be provided with on-going updates to
17 the planning manual?

18 A. I can't answer that in totality, but
19 I can assure you that there have been some agreements
20 that we have come to, for example, with the Ministry of
21 Environment, that would not have been in this document
22 because they have taken place since this material has
23 been distributed.

24 MR. FREIDIN: I can advise you that there
25 have been no amendments since February of 1988--

1 MS. SEABORN: There have been no
2 amendments?

3 MR. FREIDIN: --to the Timber Management
4 Planning Manual since February.

5 MS. SEABORN: And I take it if there are
6 any more formal ones you will be filing those during
7 the course of the hearing?

8 MR. FREIDIN: Yes.

9 MS. SEABORN: Thank you.

10 THE CHAIRMAN: I understand, Mr. Douglas,
11 though, there have been some agreements that affect the
12 manual, but they may not be in the form of specific
13 amendments; is that correct?

14 MR. DOUGLAS: Yes. This manual had to be
15 prepared to begin the timber management planning
16 process for plans which the process started the 1st of
17 April, and because you have difficulty changing the
18 instructions when you are into the process, so I am
19 assuming that this year's set of timber management
20 plans will be prepared according to this manual.

21 In subsequent years changes that we make
22 internally or the Board may rule would, of course, be
23 incorporated into this manual.

24 THE CHAIRMAN: Thank you.

25 MS. SEABORN: Those are all my questions,

1 Mr. Chairman.

2 THE CHAIRMAN: Thank you, Ms. Seaborn.

3 Mr. Freidin, do you have re-examination?

4 MR. FREIDIN: Yes.

5 RE-DIRECT EXAMINATION BY MR. FREIDIN:

6 Q. I am going to direct some general
7 questions to both of you that arise from the
8 cross-examination that has taken place over the last
9 week or so.

10 Mr. Douglas, Mr. Castrilli in his
11 cross-examination suggested to you that the Ministry
12 had attempted to entrench the status quo in this
13 environmental assessment, and in your answer you listed
14 a number of reasons for your disagreement with that
15 suggestion.

16 Two of the things you referred to were:
17 One, that there was a consolidation of a number of
18 planning manuals into one, and you also made reference
19 to there being a 20-year time horizon and 5-year
20 operations.

21 Could you, please, explain to me what you
22 meant when you said that there was a consolidation of a
23 number of planning manuals into one, and why you
24 indicated that was not an attempt to entrench the
25 status quo?

1 MR. DOUGLAS: A. Yes. My understanding
2 is that previous to 1985 there were two manuals for
3 timber management planning, one for forest management
4 agreements and others for other management units. So
5 there was two separate manuals that directed timber
6 management planning across the province.

7 When we prepared the environmental
8 assessment and the Timber Management Planning Manual,
9 those were put together so there is one set of
10 directions for timber management planning no matter
11 which management unit you are talking about; Crown,
12 company, or FMA.

13 Q. And do you know the purpose for which
14 that was done?

15 A. Well, I believe that the reason was
16 that the manual for forest management agreements was a
17 relatively new document, there was general belief
18 within the forestry program that it was an improvement
19 over the other one, and it was agreed that for two
20 reasons we should have one manual.

21 One is to increase the quality to the one
22 that seemed to be superior and, secondly, to deal with
23 a common perception that there was two set of rules;
24 one set of rules for forest management agreements and
25 one set of rules for elsewhere. So there is two

1 reasons.

2 Q. Thank you.

3 If I could direct you to the second
4 matter that I wanted to direct some comment to and that
5 is the reference to there being a 20-year time horizon
6 and five years of operation. I didn't get your wording
7 down any more particular than that.

8 A. Previously for timber management
9 planning there was a 20-year plan prepared and then
10 there would be a series of 5-year plans. So for a
11 given area you would have a 20-year plan and then you
12 would have four operating plans or 5-year plans, so you
13 would have five plans for that period.

14 Now, there was concerns about the
15 linkages between those two, that the operating plans
16 didn't relate too well to the management plans and the
17 fact that the management plan only got revised every 20
18 years.

19 Q. Let me just stop you. When you say a
20 management plan, what does that mean, in this context?

21 A. A management plan is a statement of
22 general direction for the management unit for the next
23 20 years.

24 Q. And when you use --

25 A. It did not include specific projects

1 to be undertaken, that was developed as part of the
2 operating plan.

3 Q. And by operating plan, what are you
4 referring to?

5 A. That is the 5-year plan. Now,
6 because those linkages weren't as tight as people
7 thought they should be, and I guess another reason, the
8 fact that a 20-year time horizon seemed to be too long
9 a time horizon without review.

10 We came through the 1970s with the shocks
11 in the oil price and I think there was a general
12 consensus in the Ministry that these 20-year plans, as
13 you call them, were no longer appropriate; it would be
14 much better to set a 20-year direction and then revise
15 them or review them and revise them every five years,
16 so you would have a rolling 20-year outlook, as opposed
17 to rolling 20 years without revising it.

18 Q. And the present timber management
19 plan, does it follow either of those two approaches?

20 A. What the timber management plan does
21 is gives you a 20-year outlook and then a 5-year plan
22 of operations, and at the end of the 5-year plan of
23 operations, you review the 20-year direction and update
24 that as appropriate and then outline the operations for
25 the next five years.

1 Q. Again, to you, Mr. Douglas. Mr.
2 Castrilli took you through some correspondence between
3 the Ministry of Natural Resources and Environment
4 Canada when he was reviewing part of Exhibit 5.

5 A. Correct.

6 Q. And you may recall that he made
7 specific references to concerns raised by the Canadian
8 Wildlife Service. And if I could just refer you to
9 page 205 of Exhibit 5 and ask you whether you recall
10 being directed to that particular document?

11 A. Yes, I remember that.

12 Q. At page 259 your response is set out
13 and, in your evidence, you indicated that that response
14 was given after the amendments were made to the
15 Environmental Assessment in June of 1987?

16 A. That's correct.

17 Q. You indicate in your letter to Mr.
18 Llewellyn that you believe that all of the concerns
19 raised in the earlier correspondence, which would
20 include the Canadian Wildlife Service, had been
21 satisfied.

22 Do you recall that?

23 A. That was our understanding, yes.

24 Q. And my question to you is this, sir:
25 If you are wrong about all the concerns in the

1 letter -- or all of the concerns of the Canadian
2 Wildlife Service having been satisfied; what action, if
3 any, would you take?

4 A. If we -- if it was identified to us
5 that there were further changes needed, we would
6 undertake to review those proposals and incorporate
7 them.

8 Q. Thank you.

9 Mr. Monzon, during the evidence or the
10 questioning of both of you, but particularly you, there
11 was reference to the following terms: FM units and FMA
12 units.

13 What did you understand the questioner to
14 mean when he referred to an FM unit?

15 MR. MONZON: A. A forest management
16 unit.

17 Q. And what type of forest management
18 units are there?

19 A. There are three types: There are
20 Crown management units, there are company management
21 units, and there are forest management agreement
22 management units.

23 Q. I recorded your evidence at one stage
24 to say - while you were referring to who would be
25 carrying out the activities on these various units -

1 and I understood you to say that a hundred per cent of
2 the activities on FM units would be by the company.

3 Assuming I am correct, which type of FM
4 unit were you referring to when you gave that evidence?

5 A. It would be the company unit and the
6 forest management agreement unit.

7 Q. Thank you.

8 Mr. Monzon, you were asked a number of
9 questions about the District Land Use Guideline for
10 Wawa and you were asked, I believe by Mr. Williams,
11 about the possibility of formalizing that guideline in
12 resource management plans.

13 Do you recall that line of questioning?

14 A. Yes.

15 Q. In one of your answers you indicated
16 that you didn't think that it was something that you
17 would agree with me and you indicated that you wouldn't
18 want to do that because you would want flexibility for
19 various managers.

20 Who were you referring to when you used
21 the phrase various managers?

22 A. The various managers would be the
23 district manager of the Wawa district, as well as -- or
24 any district manager, as well as the forest management
25 supervisor, the fish and wildlife management

1 supervisor, the lands supervisor, those second line
2 managers below the district manager level.

3 Q. And going back to an answer that you
4 gave to Ms. Seaborn, you referred to plans being put
5 into effect at the district level, and during your
6 evidence you used that phrase a number of times.

7 Specifically in response to Ms. Seaborn,
8 you indicated that broad policies at senior level get
9 translated down to be put into effect at the district
10 level.

11 What do you mean when you say a plan is
12 prepared at the district level or something is put into
13 effect at the district level?

14 A. It would be -- I was referring to
15 resource management plans which get prepared at the
16 district level and those are the plans -- those are the
17 vehicles for implementing the policy at the provincial
18 level as it gets transmitted down to the district.

19 Q. When you say resource management
20 plans prepared at the district level -- I understand
21 that there could be more than one resource management
22 plan for a particular resource in a district, you
23 described that as a resource management plan prepared
24 at the district level.

25 A. I'm sorry. It may be the

1 terminology. When I talk about at the district level,
2 I am talking about a plan being prepared in the
3 district; not a resource management plan that covers
4 the whole district, but a plan being prepared in the
5 district for a particular resource within that
6 district.

7 Q. So if there were four resource --
8 timber management plans in a district and you were
9 preparing -- talking about having to prepare one, in
10 your jargon, you refer to that as being a resource
11 management plan prepared at the district level?

12 A. That's correct.

13 Q. And if there was a fisheries
14 management plan, which was one plan covering the entire
15 district I assume, based on what you have said, that
16 you would characterize that in the same fashion?

17 A. That's correct.

18 Q. Mr. Monzon, is there a difference
19 between multiple use and integrated resource
20 management?

21 MR. MONZON: A. Yes. Multiple use is a
22 management strategy which the Ministry follows;
23 multiple use is more particularly a management
24 philosophy that the Ministry endeavours to utilize in
25 carrying out its business.

1 Q. Could you describe your definition of
2 a multiple use -- I'm sorry, I think it is referred to
3 actually at page 106 of the witness statement, and what
4 I want to know is whether there is a difference between
5 that and integrated resource management?

6 A. Let me --

7 Q. I think I may have given you the
8 wrong page.

9 All right. Could you then answer my
10 question; firstly, is there a difference?

11 A. Yes, there is a difference. Multiple
12 use - and it is indicated on page 106 of the witness
13 statement in the left-hand column under subtitle B,
14 Multiple Use - the second sentence indicates that
15 multiple use means that two or more uses occur in the
16 same general area either simultaneously or in sequence.

17 What we are talking about here is that --
18 a management strategy which indicates, which says
19 generally on a particular piece of land, on a
20 reasonably large piece of land - and I believe I have
21 tried to indicate this earlier in answer to questions -
22 that the Ministry attempts to utilize that piece of
23 land in that a number of different types of on-going
24 uses could be on-going at the same time.

25 It doesn't necessarily mean that on that

1 particular hundred hectares of land that timber
2 management and fishing and hunting are all going on at
3 the same time, but all of those activities would be
4 going on within that area. So we are talking
5 management strategy.

6 Integrated resources management, as
7 indicated on page 39 of the witness statement, is as
8 the title implies, a statement of philosophy: an
9 attempt to co-ordinate resource management programs so
10 that long-term benefits are optimized and the conflicts
11 between benefits are minimized.

12 And I suppose the key difference between
13 the two is the attempt to optimize benefits and
14 minimize conflicts. One could argue from a theoretical
15 standpoint that one could carry out multiple use simply
16 by ignoring any attempt to optimize benefits of, let's
17 say in my example, the hunting and the fishing
18 activities.

19 So in terms of carrying out business
20 within the Ministry of Natural Resources, the
21 philosophy of integrated resources management is
22 applied to the strategy of multiple use.

23 Q. Thank you. There was a lot of
24 discussion and questions of you about targets, district
25 targets in particular, for forest management and you

1 will see at page 118 of the witness statement the
2 target for forest management is described.

3 Firstly, could you tell me what happens
4 if the target is not met?

5 A. Well, initially -- well, first of
6 all, you are not going to know if the target is not met
7 for a period of time.

8 I think, as we have indicated in
9 evidence, there is a difference in both the timing of
10 a -- well, let me back up.

11 We indicated earlier that the forest
12 management units are not -- the boundaries of forest
13 management units are not necessarily the same as the
14 district boundaries, so it is possible that, in some
15 cases, a forest management unit boundary will overlap
16 in a district.

17 Also, timber management plans are
18 prepared over a 5-year time frame and, therefore, it
19 would not be possible to determine how well a "target"
20 was being met until that 5-year time frame had taken
21 place.

22 At that point in time we would expect
23 that the district in question would look at the degree
24 to which the timber target had been achieved and the
25 degree to which the achievement of that timber target

1 would be measured against the target in the District
2 Land Use Guideline, and I believe we have used the term
3 benchmark. It is expected that there will be a
4 difference.

5 It is the extent of the difference that
6 will determine whether or not the judgment, as Ms.
7 Seaborn referred to earlier, has been correct in
8 arriving at that District Land Use Guideline target.

9 If the achievement over the 5-year period
10 is significantly out of kilter with what was expected,
11 that is a signal to the managers both at the district
12 and at the regional level that something has happened;
13 either the original assumptions are not correct from
14 which the original target had been determined, there
15 may have been some market problems, we may have gone
16 through a series of strikes, or what have you in the
17 wood industry, something has happened.

18 One has to then look at what has happened
19 over that 5-year time frame. If it appears that
20 nothing untoward has happened, it means that one has to
21 go back at the regional level and recheck the
22 assumptions there, and then we start to go back and
23 relook at the way in which that target was determined,
24 assigned, and the bottom line is an adjustment would
25 have to be made either at the district level or at the

1 regional level.

2 Q. Mr. Monzon, there was reference to
3 targets in the Strategic Land Use Plan being based on
4 an analysis at the management unit level and working
5 its way up, and I think Ms. Seaborn reviewed that with
6 you very briefly.

7 There is an undertaking to provide
8 documentation to corroborate your evidence that this
9 exercise of target development and target testing
10 actually occurred.

11 Could you advise, short of that
12 documentation being produced, whether there is any
13 reference to this process of working up from the bottom
14 and working back down; is there any reference to that
15 process contained in any of the documentation which
16 forms part of witness statement No. 1 that you are
17 aware of?

18 A. Well, certainly on page 100 of the
19 witness statement there is a section entitled Target
20 Assignment.

21 Q. Wait until I get mine, please. Yes?

22 A. And under that, in the first
23 paragraph, there is a brief description in terms of the
24 way that those targets were derived: a consideration
25 of local, regional, provincial needs, together with

1 potentials, the testing that went on, the integration,
2 identification of conflicts.

3 Q. Can I direct you to the first full
4 paragraph there. If you go down about seven or eight
5 lines, right in the middle it says: "initially", it is
6 talking about these targets being derived -- before
7 that it says:

8 "Targets were derived through a
9 consideration of local, regional and
10 provincial needs and resource potentials
11 for each of the programs that are the
12 responsibility of the Ministry."

13 It says:

14 "Initially they were tested individually
15 in the district through an analysis of
16 resource potential."

17 What's the significance of any -- to say
18 initially they were tested individually?

19 A. Well, before -- in the undertaking of
20 any planning exercise for a particular resource, it is
21 essential that one has an understanding of what is the
22 present situation, what is the status quo; in terms of
23 timber, how much wood is being produced, how much wood
24 is being cut.

25 It is also essential to have an

1 understanding of what the demand is; what is the demand
2 for that wood fiber from within that particular area.

3 The third thing it is essential to have
4 is an understanding of potential, the raw potential or
5 capability of the land base to produce fiber.

6 In this instance, and in the instance we
7 have referred to on page 100, if you relate that to
8 timber, an analysis was undertaken at the district
9 level to determine the amount of wood fiber that
10 potentially the land base in that district was capable
11 of producing.

12 Q. Then it goes on and says:

13 "To ensure proper integration of resource
14 management activities, they were then
15 tested collectively."

16 What were tested collectively?

17 A. All of the -- all of the resource
18 management targets within the district. In other
19 words, the timber potential was tested against the
20 potential for cottaging, was tested against the
21 potential for moose, was tested against the potential
22 for deer.

23 And the reason one does that is to have
24 some sense of -- given that there are a number of
25 resource conflicts that will occur at the district

1 level, for example in parks, the decision is that one
2 is not going to cut timber in parks, then the resource
3 potential of that district should have a consideration
4 of the park, the impact.

5 Now, initially -- initially that
6 consideration would not be undertaken because when one
7 starts this exercise you start with the basic
8 capability.

9 Q. And the second sentence -- the second
10 paragraph states that:

11 "The primary guideline in the development
12 of options was that all targets should be
13 achieved."

14 A. That's correct.

15 Q. "Options that could not achieve all
16 program targets were considered
17 unacceptable."

18 What is that referring to when it refers
19 to options? Are those described in the document?

20 A. Those are the planning options that
21 were put out for public consideration at, I believe,
22 the second stage of the process.

23 First, you will recall, there was the
24 background information document that was put out, there
25 was public comment received on that at this district

1 level, that comment was taken in, a policy -- or,
2 options were put out relative to the land use
3 guidelines, there was consideration there from the
4 public, and then the final document was produced.

5 Q. Thank you, Mr. Monzon.

6 Mr. Monzon, while you have got that
7 document in front of you, could you turn to page 118,
8 please, again under the heading of Forest Management.

9 Mr. Castrilli referred you to the second
10 paragraph under the heading Objectives and he asked you
11 to confirm that the objective was to provide to the
12 forest-based industries a supply of wood sufficient to
13 meet estimated industrial requirements.

14 He didn't refer to the introductory words
15 in that paragraph which state:

16 "Within the limits of sustained yield
17 management to provide..." and so on.

18 Will sustained yield management be
19 explained by another panel, Mr. Monzon?

20 A. Yes, it will.

21 Q. Are you able to describe, in a
22 general way, or explain what this phrase means?

23 A. In a very general sense, sustained
24 yield means -- is a management concept which means
25 that - and I use the example of timber - the forest on

1 a given piece of land puts on so much growth each year.
2 At the same time, so much of that growth is lost
3 through insects, disease, fire, what have you. The
4 remainder is a net growth and it is that remainder
5 which can be harvested on what is called a sustained
6 yield basis.

7 Therefore, when you add up all of the
8 depletion that is taken away from that area of forest,
9 in the course of a year, it equals the amount of growth
10 that is put on. So one can -- the theory then is that
11 one can continue to take the same depletion as is the
12 growth each year - year, after year, after year - and
13 one does not reduce the capital, if you want, through
14 which the forest is grown.

15 Q. And I understand that that theory
16 will be explained by Dr. Osborne?

17 A. Yes.

18 THE CHAIRMAN: But how can you forecast
19 all of the contingencies like forest fires and things
20 like that?

21 In other words, if you plan to harvest X
22 amount and then you started the harvesting and midway
23 through there is a devastating forest fire, will you
24 not go below what that unit can produce the following
25 year?

1 MR. MONZON: That could in fact happen.
2 In the sustained yield concept it is important to
3 understand that this happens over quite a long period
4 of time, and there are ways that one can account for a
5 severe fire year and reduce the amount of harvest that
6 takes place in a number of other -- over a number of
7 other periods in order to make this up. So those sorts
8 of things are taken into account.

9 Over history one tends to get -- one can
10 get a record of fire, damage, insects, and those losses
11 can be identified.

12 THE CHAIRMAN: So it is basically an
13 averaging?

14 MR. MONZON: Yes.

15 MR. FREIDIN: And how those sorts of
16 factors can affect the amount or area that you harvest
17 will be directly addressed by a subsequent panel, Mr.
18 Chairman.

19 THE CHAIRMAN: Thank you.

20 MR. FREIDIN: Q. Mr. Douglas, you
21 indicated in an answer to Mr. Williams that key to
22 improving attitudes - and you were referring to
23 integrated resource management - was said to be the
24 application of the Framework document through training?

25 MR. DOUGLAS: A. Yes.

1 Q. Are there any specific actions which
2 are being taken now in relation to training, specific
3 to the Timber Management Planning Manual?

4 A. Yes, there is a very comprehensive
5 training session underway. I am not sure of the
6 details, but I can tell you that it includes not only
7 the forestry staff in the individual districts in which
8 the timber management plans are to be prepared, but the
9 district manager as well.

10 And I believe there are some of the other
11 supervisors from that district at those training
12 sessions. So the training is going beyond just the
13 unit forester who prepares a plan.

14 MR. FREIDIN: Again, that training, Mr.
15 Chairman, will be the subject matter of specific
16 evidence by a later panel.

17 Q. If I can refer you to page 102 of the
18 witness statement, Mr. Monzon, and in particular -- I
19 am sorry, page 103, the last paragraph.

20 Mr. Castrilli directed you to that
21 particular paragraph which deals with access being
22 provided to remote inland lakes, and he asked whether
23 you could confirm that there was a concern that once a
24 logging road is built through a remote area there is a
25 pressure to cut around remote inland lakes, and your

1 answer was: There is a framework to resolve those
2 disputes.

3 Could you advise me, what was the
4 framework that you were referring to?

5 MR. MONZON: A. The framework is
6 generally a process for ensuring that before a road is
7 built that there is a consideration of the values that
8 need to be considered in building that road.

9 When one is building a road through, to
10 use the phrase here, remote inland lakes, one needs to
11 look at the possibilities for fly-in fishing that may
12 exist on that lake, the possibilities for lodge
13 development that may exist on that lake, and there is a
14 planning process, that I believe will be discussed
15 within the timber management planning process later on
16 by another panel, which will identify how those sorts
17 of considerations are looked at and how the various
18 interests are brought together for discussion.

19 Q. Thank you.

20 If you could refer to page 133 of the
21 witness statement. Again, on the left-hand side of the
22 page, fourth paragraph up from the bottom, there is
23 another reference to forest access road development
24 conflicting with several outpost camp lakes.

25 Again, you were asked how the effect of

1 access roads on several outpost camp lakes would be
2 addressed, and you answered: It must be dealt with in
3 other planning processes through more precise
4 management activity on the site.

5 And it may be the same question, but:
6 What other planning processes were you referring to
7 when you made that answer?

8 A. It would be the timber management
9 planning process that will be described later.

10 Q. Thank you. Could you turn to page
11 116. I thought I would get rid of all of the questions
12 that deal with this particular document at one time.
13 And you will see that what is on page 116 actually
14 starts at the bottom of page 115 and it is dealing with
15 sports fishing.

16 You may recall that this is the area
17 where you were questioned about certain lakes in that
18 area being affected potentially by acid rain and there
19 was an undertaking, I believe, in relation to that
20 matter, Mr. Martel asked for some information.

21 Do you recall that?

22 A. Yes, I do.

23 Q. The target which is referred to at
24 the top left-hand part of that page indicates that:

25 "It is to satisfy angling demand through

1 the provision of up to 312,000 kilograms
2 of sports fish per year by the year 2000
3 from inland waters."

4 Mr. Castrilli took you to the right-hand
5 side of the page, the second full paragraph, where it
6 indicates that the theoretical annual yield from sport
7 fishing in the waters is 312,000 kilograms and the
8 figure was more than six times the present harvest.

9 Could you indicate, in Table 3, what is
10 the present harvest?

11 A. The present harvest is 50,000
12 kilograms per year.

13 Q. How many angler days were resulting
14 in that harvest?

15 A. Roughly -- well, according to the
16 table, 100,000 angler days per year.

17 Q. By the year 2000, what does the
18 document indicate will be the predicted number of
19 angler days?

20 A. 112,000.

21 Q. Which is an increase of what
22 percentage?

23 A. It is an increase of 112,000 -- well,
24 12 per cent.

25 Q. And if you increase the harvest level

1 by 12 per cent, it was 50 at the time of the document,
2 what do you end up with?

3 A. If you increase the harvest level by
4 12 per cent, it would be about 56.

5 Q. So if you looked at the second column
6 of this particular Table No. 3, 560 would be incorrect
7 in your view, it should be 56?

8 A. Yes, that's correct.

9 Q. If the increase is, as you have
10 indicated, 12 per cent, would there be sufficient fish
11 to sustain that particular harvest?

12 A. Yes, there certainly would.

13 Q. If all of that -- all of those fish
14 would have to disappear because of acid rain, what
15 decrease would you need in the present stock of those
16 lakes?

17 A. If all of the fish within the
18 district were to disappear -- sorry, I don't understand
19 the question.

20 Q. All right. By what percentage would
21 the present yield have to decline by the year 2000
22 before it would no longer sustain an annual harvest of
23 56,000 kilograms per year?

24 A. Well, it would have to decline in the
25 order of -- well, some six to seven times.

1 Q. All right.

2 Mr. Douglas, I want to refer you to some
3 of the cross-examination of you by Mr. Colborne.

4 In relation to a discussion of the
5 District Land Use Guidelines you indicated that the
6 things that interest the natives are in the District
7 Land Use Guidelines, but more direction is in resource
8 plans in terms of how to manage the resource and the
9 types of groups you and -- I didn't catch the rest.

10 You indicated that the Timber Management
11 Planning Manual has a whole section on public
12 consultation, and Mr. Colborne cut you off when you
13 referred to page 156 of the Environmental Assessment
14 Document.

15 Can you advise what part of that document
16 you were attempting to bring to the Board's attention
17 at that time?

18 MR. DOUGLAS: A. Just a second, please.
19 Yes, in page 156 --

20 Q. Just hold it for one second, please.
21 Okay.

22 A. What I was attempting to indicate was
23 some of the details in the public notice, in fact, some
24 of the amendments that we made.

25 If you look at public notice, over the

1 last paragraph, we are talking about direct written
2 notice to local, regional offices of government
3 agencies, municipalities, interest groups, and we added
4 in Band councils in each Indian reserve in the forest
5 management unit, native communities and organizations.

6 So we have identified in the amendments
7 in June, '87 that a specific invitation has to go
8 there, to each one of these.

9 The other thing that I was wishing to
10 speak about as well was the need to also verbally
11 communicate with the native people. From the
12 indications that we had, there are cases where they
13 would prefer to communicate that way as opposed to the
14 written form.

15 So there was changes made and, for
16 example, if you go to page 158 and you look in the
17 second paragraph it says:

18 "Direct verbal communications may serve
19 as additional form of notification where
20 appropriate."

21 Those words were specifically put in
22 there to deal with native people, although certainly
23 there are others who would prefer verbal communication
24 as opposed to written.

25 MR. MARTEL: Could I ask a question at

1 this point then. What was done prior to this; what
2 type of notification was given prior? On page 156, you
3 say amendments were made to:

4 "...Band councils of each reserve in the
5 forest management unit, native
6 communities, and organizations."

7 What was done prior to this to be in
8 contact with the native community?

9 MR. DOUGLAS: I am not sure what was done
10 in each specific district, but there was certainly --
11 for example, under the old process there were notices
12 put in papers.

13 In some districts, they already do this
14 in making these amendments or making it mandatory here
15 across the entire province where timber management
16 takes place. So there was a variety of written and
17 unwritten.

18 According to the exemption order that we
19 are working under presently, there was a need to put
20 some kind of public notice. We are just increasing
21 this, making sure it happens everywhere.

22 MR. HUNTER: Could I answer that?

23 THE CHAIRMAN: You will get your turn,
24 Mr. Hunter.

25 Mr. Freidin, we are going to be taking a

1 break shortly, would you find a convenient point,
2 please?

3 MR. FREIDIN: This is as convenient a
4 place as any.

5 THE CHAIRMAN: All right. The Board will
6 break for 20 minutes.

7 ---Recess at 2:35 p.m.

8 ---Upon resuming at 3:05 p.m.

9 THE CHAIRMAN: Thank you. Be seated,
10 please.

11 MR. FREIDIN: Q. Mr. Douglas, when we
12 broke we were dealing with certain pages of the
13 Environmental Assessment Document which have been
14 amended to make more specific reference to certain
15 subjects dealing with native people.

16 MR. DOUGLAS: A. Yes.

17 Q. In the two portions that you referred
18 us to there were certain passages in italics?

19 A. Yes.

20 Q. Am I correct that when something
21 appears in the book in italics it indicates that it was
22 the subject of a 1987 amendment?

23 A. That's correct. And those two things
24 I mentioned happened at each of the various stages of
25 public consultation which will be described by Panel

1 15, I believe.

2 Q. And there are a number of
3 opportunities for public consultation, I understand.

4 A. There is four steps.

5 MR. FREIDIN: Mr. Chairman, at the -- I
6 don't want to lead the witness, however, I think it
7 might be helpful if the Board had reference to other
8 passages which dealt with exactly the same subject
9 matter as the witness just referred to.

10 And, with the Board's permission, I would
11 like to direct Mr. Douglas to those particular
12 passages.

13 THE CHAIRMAN: I do not see any problem,
14 just to speed this up, to refer him to the various
15 sections.

16 MR. FREIDIN: Thank you.

17 Q. Can you turn to page 153, Mr.
18 Douglas, of the Environmental Assessment Document.

19 MR. DOUGLAS: A. Yes.

20 Q. And I understand there is an
21 amendment at lines 13 to 18 which deal with notice to
22 native people?

23 A. Yes.

24 Q. Which indicates:

25 "For each of the formal opportunities

1 which is provided, specific notice will
2 always be given to the Band council of
3 each Indian reserve in the forest
4 management unit and any other native
5 communities and organizations which are
6 potentially affected."

7 A. Yes, that's correct.

8 Q. Has the Ministry made any commitment
9 to communicate with Indians regarding timber management
10 in forums or situations in addition to the open houses
11 or other public consultation opportunities provided to
12 the public generally?

13 MR. HUNTER: I object, Mr. Chairman. I
14 don't believe that is re-examination, I think that is
15 leading new evidence.

16 THE CHAIRMAN: I think probably, Mr.
17 Freidin, Mr. Hunter is correct. I do not think we
18 really got into anything other than talking about the
19 very peripheral way the various notices were sent out.

20 MR. FREIDIN: Well, I would submit, Mr.
21 Chairman, that Mr. Colborne spent a considerable length
22 of time, and Mr. Hunter was not here to get the benefit
23 of that particular cross-examination and sort of the
24 innuendo which was put forward.

25 I would suggest that a lot of Mr.

1 Colborne's cross-examination was specifically directed
2 to creating the impression that there has been
3 inadequate attempts to deal with the native people or
4 to contact them, and I am going to -- and I would like
5 to ask this question in that regard, and I have other
6 questions which I would like to ask this witness in
7 that regard, particularly to respond to those
8 suggestions and some questions that Mr. Martel had.

9 THE CHAIRMAN: Well, Mr. Hunter, I stand
10 corrected to the extent that Mr. Colborne, to my
11 recollection, did go into the inadequacy -- at least
12 the contention of an adequacy in terms of consultation
13 with the native people in a general way.

14 MR. HUNTER: Thank you, Mr. Chairman.

15 THE CHAIRMAN: And, as a result, I think
16 these questions are really directed towards showing
17 that the Ministry does, in fact, have policies to deal
18 with the native peoples in terms of consultation.

19 MR. HUNTER: Well, my only concern, Mr.
20 Chairman, is it goes directly to a question that Mr.
21 Martel did raise and, that is, what were the procedures
22 prior to 1987.

23 This evidence simply says what the
24 Ministry is proposing to do.

25 THE CHAIRMAN: Well, that may be, but I

1 think--

2 MR. HUNTER: Sorry.

3 THE CHAIRMAN: --Mr. Colborne referred
4 to, in his questioning, in his cross-examination about
5 what policies the Ministry, as I understood it, had or
6 will have--

7 MR. HUNTER: I see.

8 THE CHAIRMAN: --in connection with
9 consultation with the native peoples.

10 MR. FREIDIN: And I think it would be of
11 interest to the Board, regardless of what subject we
12 were talking about, to determine whether or not the
13 proponent was willing to make a commitment in terms of
14 that particular subject matter, and I just want to get
15 that on the record.

16 THE CHAIRMAN: All right. I think it
17 would be in order for you to proceed.

18 MR. FREIDIN: Q. Do you want me to
19 repeat the question, Mr. Douglas?

20 MR. DOUGLAS: A. Yes, please.

21 Q. Could you advise whether any
22 commitment is made by the Ministry of Natural Resources
23 to communicate with Indians regarding timber management
24 in forums or situations in addition to open houses or
25 other public consultation opportunities which are

1 provided to the public generally?

2 A. Yes. There are a number of different
3 attempts; some at the general level, some more at the
4 specific level, in terms of explaining to the native
5 people what the timber management planning process is.

6 There has been a little brochure
7 specifically identifying what that process is and that
8 has being translated into the native language to
9 provide a better understanding of what the process is,
10 what kind of decisions get made. I don't have one in
• 11 front of me, but it is in production.

12 As I indicated, I believe about a week
13 and a half ago, there was also a manual which explained
14 our management system with particular reference to
15 involvement at land use planning and resource
16 management planning in general.

17 In terms of other forums other than
18 resource management planning, I believe Mr. Monzon
19 indicated that there was many efforts made in the
20 development -- or Guidelines for Red Lake, Sioux
21 Lookout, Geraldton and more recently Moosonee to
22 contact the native people in terms of, particularly,
23 the remote communities where travel is difficult and
24 where language tends to be more of a barrier.

25 In respect to the Red Lake, Sioux Lookout

1 and Geraldton districts, there was, I believe, seven or
2 eight documents that were translated into the native
3 language to explain some of the things that we were
4 proposing to those people and there was also, I
5 believe, a video which would explain it in their
6 language.

7 In terms of Moosonee, there has been
8 on-going work with the native people in their
9 individual communities to get information on the
10 resource base and in fact we, I understand, have hired
11 them to collect some of that information.

12 Q. Mr. Douglas, I am just wondering
13 whether you could go back -- all right, I'm sorry.

14 A. So there have been certainly
15 efforts - verbal, written - to contact those people.

16 In terms of the West Patricia planning
17 exercise, there was attempts made at various levels, at
18 the treaty organization, at the band level, it was done
19 in a written word, it was done in the verbal in the
20 sense of phoning people, making invitations to go on
21 reserve to talk to the native people to get some
22 indication from them what those traditional areas of
23 interest to them were.

24 Q. Is there any commitment to continue
25 to go on to remote native -- or go to remote native

1 communities?

2 A. There are other references in the
3 manual, and I don't have them in front of me.

4 Q. Could I direct you to Exhibit 5 which
5 is the Government Review by the Ministry of the
6 Environment at page 245. m.

7 If I could just direct you to...

8 A. Yes, the first paragraph. We are
9 stating that MNR staff would be pleased to attend
10 special meetings with remote native communities with
11 respect to timber management when invited to do so.

12 Certainly the Ministry is willing, when
13 the invitations are issued, to go on reserve to explain
14 proposals, and that would apply to the various
15 activities that the Ministry is involved in; it
16 wouldn't be restricted to timber management. We would
17 be quite pleased to do that in terms of fisheries
18 management, which is a very big concern of some of
19 those communities.

20 Q. Now, during the evidence and
21 questioning there was certainly - and particularly to
22 Mr. Monzon - there was reference to attempts being
23 made, as you have referred to, to consult with various
24 native groups.

25 Mr. Monzon's evidence was that it was

1 very difficult to get native involvement, that the
2 attempts were not very successful.

3 Mr. Douglas, I understand that the
4 involvement of native people in district land use
5 planning, in particular, West Patricia land use
6 planning which was just referred to by you, was the
7 subject of an interrogatory on Panel No. 1 and the
8 subject of a fairly extensive or lengthy answer.

9 Am I correct?

10 A. That's correct.

11 Q. And I show you a document. (Handed)

12 Could you advise whether that is Question
13 1 and Question 3 to the interrogatory asked by
14 Nishnawbe-Aski Nations and the answers thereto, plus
15 one attachment being a document referred to in the
16 answer to Question No. 3 entitled: Excerpt of Main
17 Events in Native Communities, a document of 26 pages in
18 length?

19 A. That's correct.

20 MR. FREIDIN: I would like to file that
21 document as an Exhibit, Mr. Chairman.

22 THE CHAIRMAN: Very well. Exhibit No.
23 52, I believe.

24 MR. FREIDIN: And although this document
25 has been on the public record for many weeks or months,

1 I have made extra copies in case some of the people
2 here don't have their copy with them.

3 ---EXHIBIT NO. 52: 26-page document Re: Question 1
4 and Question 3 to an Interrogatory
5 of Nishnawbe-Aski Nations and
6 attachment referred to in answer to
7 Question 3 entitled: Excerpt of
8 Main Events in Native Communities.

9 THE CHAIRMAN: Excuse me, Mr. Freidin, I
10 just want to interrupt for a moment and speak to Mr.
11 Edwards.

12 Mr. Edwards, subsequent to Mr. Freidin's
13 re-examination we are going to be dealing with any
14 further representations on the issue of the distinction
15 between forest management and timber management.

16 Mr. Castrilli and yourself reserved your
17 right to comment after receiving instructions from your
18 clients. So we would like to deal with that at the end
19 of this and get rid of that issue completely today, if
20 that is acceptable to you.

21 MR. EDWARDS: I am ready to deal with
22 that today, Mr. Chairman.

23 THE CHAIRMAN: Thank you.

24 Mr. Freidin, sorry?

25 MR. FREIDIN: There was just another
document that was attached, Mr. Chairman, and it is the
Appendix A of the various district land use guidelines.

1 I guess certain ones were referred to by Mr. Colborne:
2 Kenora, Fort Frances and Dryden.

3 I think these are part of the answer to
4 Question 3. I won't list all of the districts.

5 (Handed)

6 THE CHAIRMAN: Thank you.

7 MR. HUNTER: Mr. Chairman, I have a
8 procedural question. My client did not raise any
9 questions in terms of Treaty 9 or Windigo in
10 relationship to participation in this panel; I don't
11 know what Mr. Colborne raised.

12 Mr. Freidin is now presenting evidence on
13 re-examination which has a direct relationship to my
14 client; it may have some relationship to Mr. Colborne's
15 client.

16 I do not think, in the circumstances, it
17 is appropriate for Mr. Freidin to be effectively
18 introducing evidence which affects my client's case,
19 which is of some substantial input, at this particular
20 point, and I would ask you to have him withdraw all of
21 that evidence which affects Treaty 9 and the Windigo
22 Tribal Council.

23 Failing to do so, I feel very strongly
24 that I should have the right to examine directly Mr.
25 Douglas and Mr. Monzon on this interrogatory.

1 MR. COSMAN: Mr. Chairman, as a party
2 outside of the particular dispute that is going on
3 here, perhaps I might be able to assist.

4 What has been handed to me are questions
5 and answers in respect to interrogatories, not
6 information or documentation separate and apart from
7 that. And, in that respect, it is my right - as it is
8 the right of party - to file it before you. So it is
9 not -- with respect, it is not opening up something new
10 from what I can see. I can file this right now and it
11 becomes evidence, and I have a right as a party to do
12 that.

13 It just might shorten the whole
14 proceeding, knowing that I can do that as well as any
15 other party, and why have an argument over whether an
16 answer to an interrogatory can go in.

17 MR. HUNTER: I think, Mr. Chairman, this
18 could have been introduced by any other party at the
19 time of their examination-in-chief, or at the time of
20 their cross-examination, not re-examination.

21 THE CHAIRMAN: But it may not have been
22 an issue at the time of examination-in-chief, it may
23 have raised itself as an issue as a result of the
24 cross-examination of one of the other parties which
25 happened to be, I believe, if I understand correctly,

1 Mr. Colborne who questioned the public participation
2 aspect.

3 MR. FREIDIN: Yes, and who, as my notes
4 indicate, specifically referred to West Patricia Land
5 Use Plan, and I would submit that even if I didn't I
6 would still be asking to file that material for the
7 same reasons I have already indicated.

8 MR. HUNTER: I am simply requesting that
9 the evidence that is led in re-examination by Mr.
10 Freidin simply strike those references in the West
11 Patricia Plan to my clients who did not raise this as
12 an issue in cross-examination.

13 THE CHAIRMAN: Well, although it was not
14 raised specifically by you, Mr. Hunter, in
15 cross-examination, is not the purpose of the
16 interrogatories on any of these panels to bring before
17 the Board clarifications of the evidence being adduced
18 by those witnesses as a result of their witness
19 statements?

20 And I am not sure that it makes a lot of
21 difference as to who files the material. If the
22 interrogatories were posed, and I take it these are
23 interrogatories posed by yourself; is that correct?

24 MR. HUNTER: That's correct, Mr.
25 Chairman.

1 THE CHAIRMAN: On Panel 1?

2 MR. HUNTER: That's correct.

3 THE CHAIRMAN: And if you chose not to
4 necessarily deal with these interrogatories in your
5 cross-examination of Panel 1, why necessarily should
6 somebody else be precluded from doing so?

7 MR. HUNTER: I am not suggesting that,
8 Mr. Chairman. Well, first of all, I think the basic
9 point is that MNR leads its evidence, we cross-examine,
10 MNR is entitled to re-examine, but not to lead new
11 evidence. This issue --

12 THE CHAIRMAN: Well, just hold a second,
13 let's go right there. Because you chose not to
14 cross-examine orally Panel 1, is this interrogatory in
15 effect not a form of cross-examination?

16 MR. HUNTER: No, Mr. Chairman, it is not
17 because it was up to the parties to determine whether
18 to file that interrogatory before the Board, and it is
19 only when it is filed that it becomes evidence, that it
20 in fact is placed before the Board and, therefore,
21 subject either to examination or for cross-examination.

22 My argument is, if Mr. Freidin can enter
23 this evidence, then I have a right to re-examine on it
24 because we did not raise it in our cross-examination;
25 we did not bring it before the Board, and my argument

1 is, sir, that Mr. Freidin is now introducing new
2 evidence which is clearly prohibited in re-examination.

3 We choose to conduct our case in a
4 certain way. I think we should, at least according to
5 the rules, be allowed to know what the parameters are
6 in terms of our examination and re-examination.

7 THE CHAIRMAN: Well, I can understand
8 your concern to some extent, but we are facing sort of
9 an interesting dilemma. All the parties, in effect,
10 have before them this clarification of Panel 1's
11 evidence as a result of the interrogatory process,
12 other than the Board, if nobody chooses to introduce
13 the interrogatories into evidence.

14 In other words, the witness statements
15 were filed, direct examination took place on the
16 witness statements, oral cross-examination took place
17 of the panel, and the parties have before them the
18 clarifications - or whatever you want to term the
19 interrogatories and their answers - except the Board
20 does not have those in front of them.

21 MR. FREIDIN: I don't know whether it is
22 of any assistance, but I don't intend to ask this
23 witness any questions on this document. The question
24 was asked, the answers have been given, and I may just
25 ask the witness if he can identify when it was prepared

1 and perhaps by whom.

2 But, other than that, I certainly don't
3 intend to go through the document. It will have to
4 speak for itself and the Board will have to give it
5 whatever weight it feels is appropriate.

6 THE CHAIRMAN: I mean, I guess we should
7 clear this up now.

8 Why should the Board necessarily be
9 prohibited from the benefit of questions posed by
10 whatever party and the answers provided by whatever
11 party to whom those questions were posed?

12 MR. HUNTER: I have no difficulty with
13 that, Mr. Chairman, if in fact it were to be adopted as
14 a procedure that all interrogatories and all answers
15 were to be filed with the Board. I have absolutely no
16 difficulty with it.

17 My only concern is that at this
18 particular point in time Mr. Freidin is choosing to
19 introduce what I consider to be new evidence in
20 relationship to my client's interest, therefore, I
21 ought to have the right to re-examine on that evidence.

22 If the Board would rule that
23 interrogatories should be filed with the Board, I would
24 welcome it. I have no difficulty with it.

25 THE CHAIRMAN: Mr. Castrilli?

1 MR. CASTRILLI: Mr. Chairman, I would
2 like to rise in support of Mr. Hunter. I, as you
3 recall, introduced during the course of my
4 cross-examination of Panel 1 the interrogatories that
5 related to the questions asked by my clients of Mr.
6 Freidin's witnesses because I anticipated a difficulty
7 otherwise in having that information otherwise before
8 the Board.

9 I would think that it would be
10 appropriate for subsequent panels that all of the
11 interrogatories be filed by Mr. Freidin in-chief so
12 that they are before the Board so that this kind of
13 problem doesn't arise again, otherwise I am in full
14 support of Mr. Hunter's concern in respect to this
15 particular interrogatory.

16 THE CHAIRMAN: Well, Mr. Freidin, if it
17 was your intention just to file these, have them
18 identified and filed, would you object to them being
19 filed without questions being posed on them?

20 MR. HUNTER: Would I object to
21 interrogatories being filed...?

22 THE CHAIRMAN: To these interrogatories
23 being filed before the Board without, as I understood,
24 questions being posed on them. Is that...

25 MR. FREIDIN: I am sorry, Mr. Chairman, I

1 didn't catch that.

2 THE CHAIRMAN: Did you not just indicate
3 that you were not intending to ask this panel questions
4 on these interrogatories but to merely identify them
5 and file them?

6 MR. FREIDIN: That's correct.

7 THE CHAIRMAN: And then indicate that in
8 future the interrogatories that have been posed and the
9 answers given thereto should probably be filed with the
10 Board.

11 MR. FREIDIN: I cannot agree with that,
12 Mr. Chairman. As I understand it, the main rationale
13 for the Board ruling in the first instance that
14 interrogatories would not be filed with the Board is
15 that it would be absolutely impossible for the parties
16 to know what was being relied on, by whom, for what
17 purpose; and that there should be some sort of a
18 selective reference to these and they should be
19 introduced into evidence through a party.

20 I don't think there is any question what
21 the intent of this document is either to you, Mr.
22 Chairman, or other members of the Board or the other
23 parties. The hearings will take even longer if we have
24 all the answers and all the questions submitted and
25 everyone is trying to figure out who is using what for

1 what purpose.

2 THE CHAIRMAN: Well then, how do you
3 answer Mr. Hunter's objections that these were not
4 introduced at a time when he had an opportunity to ask
5 questions as to how they are going to be used and what
6 weight should be put on them?

7 MR. FREIDIN: It is because it was not
8 part of my case. It was not my intent, through these
9 witnesses, to indicate -- I have led no evidence on the
10 amount of contact with Indian communities or the native
11 people, it was raised during cross-examination.

12 I mean, if I don't call it now and try to
13 put this in now, I am sure Mr. Hunter would be the
14 first person to complain that I didn't do it in Panel 1
15 when I was relying on a Panel 1 answer, if I tried to
16 do it in Panel 5.

17 You know, and we have got this hearing
18 which has got all these issues, and hopefully this
19 problem will sort of get narrower as we go along, but I
20 can't put in my whole case through my first panel.

21 I have no idea what was going to be
22 raised and, as you appreciate, a lot of evidence has
23 been referred to or dealt with issues to be dealt with
24 by other panels. I am not seeking to go through that
25 evidence with this panel because I have got other

1 panels to deal with that.

2 But where would it be more appropriate to
3 deal with this issue than the panel, I mean, to respond
4 to it when it's dealing with district land use
5 planning, it is dealing with the West Patricia which
6 was raised specifically and it was raised specifically
7 by Mr. Colborne in terms of the -- you know, using his
8 questioning for the purposes I indicated earlier.

9 I don't see any place where it is more
10 appropriate than right here.

11 MR. HUNTER: Mr. Chairman, I think, as
12 Mr. Freidin said, it was not in his case to begin with.
13 I would disagree with him, of course we are going to
14 deal with this issue. I thought that we would deal
15 with it more probably in Mr. Freidin's Panel 15.

16 But Mr. Freidin is saying: Let me
17 introduce new evidence. Simple rules of the game are
18 very simple. That is what he wishes to do, sir, and I
19 respectfully submit, sir, that I have a right to cross-
20 examine.

21 In the alternative, Mr. Freidin can
22 withdraw his evidence, re-submit it in Panel 15, which
23 is more appropriately going to deal with the question
24 of public participation, or in the alternative to
25 undertake to bring Mr. Monzon and Mr. Douglas back to

1 deal with this particular interrogatory in Panel 15.

2 I can't let him submit this evidence,
3 which substantially goes to my clients' case, without
4 examining MNR witnesses on it.

5 THE CHAIRMAN: Well, Mr. Freidin, I think
6 that the Board is persuaded, to some extent, that Mr.
7 Hunter has a valid objection in the sense that,
8 although I believe that you are trying to respond to
9 Mr. Colborne's questions in cross-examination,
10 nevertheless, if you are going to introduce these
11 interrogatories and the answers thereto which
12 specifically impinge upon the interest that Mr. Hunter
13 represents, he should have an opportunity to question
14 the panel and cross-examine the panel on these specific
15 documents.

16 But perhaps we can get around this thing
17 by following his suggestion, that if you are going to
18 be dealing specifically with public consultation with
19 Panel 15 at a future date, could you not introduce this
20 evidence at that time and then allow the parties to
21 cross-examine that panel on the whole question?

22 MR. FREIDIN: Well, I am not too sure
23 whether I want to lead that as part of 15.

24 THE CHAIRMAN: Well, whatever panel.

25 MR. FREIDIN: Do I have the discretion to

1 call that evidence? I mean, if you are ruling that I
2 can't submit it in the fashion that I have...

3 THE CHAIRMAN: Oh, I think if you are
4 going to submit it in the fashion that you are
5 proposing to do so, we would have to open up this
6 document to further cross-examination by Mr. Hunter on
7 these documents specifically.

8 You did indicate, I believe, that you
9 were going to deal with public participation as a
10 separate panel, or as part of a separate panel farther
11 down the road.

12 MR. FREIDIN: I am not too sure whether
13 that panel will deal specifically with public
14 participation. It may be that it is something that I
15 could call -- if I was going to call that evidence, for
16 the purposes of allowing Mr. Hunter to cross-examine,
17 to call it as part of reply evidence.

18 It is just that my panels are not made up
19 with the people who, I think, can specifically deal
20 with that matter.

21 THE CHAIRMAN: Well, it was our
22 understanding, I think in response to earlier
23 questions, that there was going to be some panel
24 dealing with the whole question of public
25 participation, I believe this panel indicated that, at

1 some future time.

2 MR. DOUGLAS: Mr. Chairman, I made
3 several references to public consultation in timber
4 management planning as opposed to land use planning.

5 THE CHAIRMAN: So you are going to deal
6 with public participation in a very narrow facet only,
7 dealing with timber management planning as opposed to
8 overall planning?

9 MR. FREIDIN: That's what panel 15 was
10 going to deal with. I want this panel to go home
11 today.

12 I am just wondering whether we can sort
13 of hold this one down until the end and then I may ask
14 for a ten-minute opportunity to speak to my client as
15 to whether in fact this material -- we want this
16 material to go in, regardless of whether there is
17 cross-examination of 15 or somewhere else.

18 To be quite frank with you, my initial
19 position is -- or was and still is, that this document
20 was there only to respond to the suggestions made by
21 Mr. Colborne, and it was information which is on the
22 public record which is available to Mr. Colborne, even
23 Mr. Colborne either knew or had the opportunity to know
24 of that document and if he thought he was --

25 THE CHAIRMAN: You must admit, this is

1 somewhat unusual. I mean, here we have a document put
2 in by -- or, instigated in the first instance by Mr.
3 Hunter asking questions of Panel 1 responses to it, and
4 then the questions opening up the issue came from
5 another counsel representing other parties.

6 MR. FREIDIN: So I will put it in and I
7 won't be responding to the position that is taken by
8 Mr. Hunter's client, because Mr. Hunter's client didn't
9 take any position. I am putting it in to respond to
10 Mr. Colborne's suggestion.

11 THE CHAIRMAN: I know, but it did not go
12 in as a result of Mr. Hunter's cross-examination nor
13 did it go in as a result of your direct examination.

14 I mean, it is coming in for the first
15 time, effectively, in your re-examination and I feel
16 that Mr. Hunter is somewhat prejudiced by not being
17 able to cross-examine on this document.

18 MR. FREIDIN: Just so I know what to
19 discuss, assuming that I can have my ten-minute
20 opportunity later on, is it the Board's intention that
21 Mr. Hunter be the sole person who can cross-examine on
22 this document, or is it open for everybody to
23 cross-examine?

24 We might as well discuss that now too.

25 MR. HUNTER: Mr. Chairman, perhaps I can

1 offer a solution. I don't object to Mr. Freidin
2 leading this evidence, but I will reserve the right to
3 lead evidence as well with respect to this subject in
4 direct relationship to this material.

5 THE CHAIRMAN: As part of your case?

6 MR. HUNTER: Yes. And I may
7 cross-examine on it in relationship to Panel 6,
8 depending upon the evidence which is led. I am not
9 going to prejudice myself.

10 I may, in fact, introduce this in
11 cross-examination, depending upon the evidence which is
12 led in 6 and 7. I presume that I will deal with this
13 issue in Panel 15 and, if necessary, I will deal with
14 it in direct evidence, but there are people identified
15 on these sheets who we will present as witnesses in
16 relationship to that which MNR is saying about them.

17 THE CHAIRMAN: Well, I do not see any
18 problem whatsoever about you introducing it as part of
19 your case or referring to it as part of your own case,
20 nor do I see any problem with you cross-examining any
21 panel with respect to this particular evidence.

22 MR. FREIDIN: Okay, and I just know where
23 we are going to go and when that -- just so that all
24 the cards are on the table: When that happens and Mr.
25 Hunter spends a lot of time on a particular piece of

1 correspondence or a particular tribal council, then I
2 am going to then want to deal with it in reply
3 evidence. Just so you know that that is what is going
4 to happen.

5 Maybe that's just a fine way for it
6 happen, but I want to make sure that my client's rights
7 are preserved, realizing of course that Mr. Hunter just
8 wants to preserve what he believes is his clients'
9 rights.

10 THE CHAIRMAN: Well, this is the problem.
11 We have to protect everybody's rights and, you know, we
12 may not be able to dispose of it neatly by not having
13 cross-examination at a particular time, particularly
14 when there is going to be panels, Mr. Freidin, that are
15 going to, frankly, overlap.

16 I mean, we are going to be dealing with
17 public participation in some facet at a future date;
18 whether or not it deals with the land use planning as
19 opposed to the timber management planning aspect
20 remains to be seen. I would be surprised, frankly, if
21 there will not be some overlap when discussing the
22 timber management planning concepts with land use
23 planning in any event.

24 I do not think in this case we can
25 approach it rigidly in the sense that every category is

1 mutually exclusive.

2 So, how are we going to go end this off,
3 Mr. Hunter?

4 MR. HUNTER: I withdraw my objection,
5 Mr. Freidin can enter it as an exhibit, I will not
6 cross-examine on it on the presumption that he will
7 just simply be introducing this document.

8 I wish to inform the Board that subject
9 to the evidence which is led by MNR - presumably in 6,
10 7 or 8 - we may in fact cross-examine on this document
11 and we will probably lead that evidence in relationship
12 to this matter when it comes to our case, Mr. Chairman.

13 THE CHAIRMAN: Okay. Let's just deal
14 with the collateral issue for a minute; and, that is,
15 where the Board fits in in terms of these
16 interrogatories.

17 I think earlier it was our view that if
18 interrogatories were posed and answers given and the
19 parties were essentially happy with that, unless they
20 were specifically referred to by a party and
21 introduced, that they would not necessarily be filed
22 with the Board.

23 And I think that the rationale behind
24 that was as explained, the parties would not know how
25 much weight that the Board would be placing on the

1 document if everything were just filed and we just read
2 things at our leisure, whether or not they were even
3 referred to.

4 But I think there is some difficulty when
5 parties, at some stage of the game, want to refer to
6 this documentation and it does not come in necessarily
7 through somebody's direct evidence.

8 I mean, how do we get around that problem
9 that we are facing right now where some party, in
10 cross-examination, or even in reply, wants to put it
11 in?

12 MR. COSMAN: Mr. Chairman, I haven't
13 reviewed carefully all of the rules and directions made
14 in the course of the preliminary meetings, as well as
15 the notification of your rules, but I recall at the
16 moment when interrogatories were asked by a party,
17 another party may see that certain questions have been
18 asked, they need not ask the same questions.

19 THE CHAIRMAN: That's right.

20 MR. COSMAN: But that party has the right
21 to take those answers and make it part of his case, as
22 much as the party who asked the questions, or else
23 everybody is going to have ask the questions in order
24 to be able to file them.

25 That being the case, as long as there is

1 a party, other than the party who answered the
2 questions, who wants to file those answers, as with an
3 examination for discovery with respect to questions of
4 parties opposite, I understood that that party had the
5 right to file it.

6 Truthfully, I could not put my finger on
7 it when I reviewed your directions and perhaps that...

8 THE CHAIRMAN: And would that apply also
9 to the proponent in re-examination?

10 MR. COSMAN: I would think so, Mr.
11 Chairman. I may not -- for example, I may pose an
12 interrogatory, get an answer which I want as part of my
13 case, rather than waste the Board's time in an open
14 hearing asking the question again and getting an
15 answer, I will file it as part of my case when it is my
16 turn to present my case.

17 I think that is very useful in terms of
18 controlling your process and avoiding a lengthy
19 hearing.

20 THE CHAIRMAN: Well, what if it is
21 referred to -- what if the subject matter of the
22 interrogatory is effectively referred to by a party in
23 cross-examination, notwithstanding the interrogatory is
24 not before the Board?

25 MR. COSMAN: Well, I was suppose there is

1 another way to deal with that. I think Mr. Freidin did
2 it in a very cost-efficient, time-efficient way.

3 The question was raised by Mr. Colborne
4 as to contact with the native peoples. Now, in
5 re-examination Mr. Freidin might have taken his
6 witnesses on a question-and-answer basis through all
7 the material that is in that document.

8 The fact is that document contains the
9 information that he wants in response to the -- in
10 re-examination, and that's all it is, is a short form
11 for full re-examination, in effect.

12 There will be nothing to restrict Mr.
13 Freidin, or me in my case, or Mr. Hunter when it is his
14 turn or time to put his case in, to re-examine in
15 respect of the matter, even if answers were already
16 contained in an interrogatory.

17 The only question we have here is: Is it
18 an appropriate short form, time-saving measure to file
19 the interrogatory with the answers which has that
20 information. I think that is all before you.

21 Because, as I understand the rules,
22 whether or not Mr. Hunter's happy or not with the
23 answers he got, he may not want it to go in right now.
24 when it's my turn I can file that answer as part of my
25 case and he is not restricted in terms of

1 cross-examination.

2 He had the answer before the witness
3 testified, he chose not to cross-examine and,
4 furthermore, why does that mean that I cannot use that
5 answer at a subsequent period of time?

6 In the usual way, there would be no
7 restriction, as I understood your directions.

8 THE CHAIRMAN: Well, certainly the
9 purpose of the interrogatories is so that all of the
10 parties can have the benefit of the answers, and that
11 is so that each party will not have to, in
12 cross-examination, or frankly in putting in their own
13 case, have to deal with everything.

14 If one party has covered it, in effect,
15 and the answer satisfies the other parties, as I
16 understand it, the purpose of the interrogatories is
17 used in that way to shorten the process.

18 MS. SEABORN: Mr. Chairman, I don't think
19 the proponent though can have it both ways. I don't
20 think we should put aside Mr. Castrilli's suggestion
21 whereby he says we file all interrogatories and they
22 become evidence.

23 On the other hand, that allows Mr.
24 Freidin to introduce interrogatories in reply. If the
25 proponent and the parties in-chief fail to file

1 interrogatories for whatever reason, then Mr. Freidin
2 has to deal with in reply, the same question, well, I
3 agree with Mr. Cosman that he could do that by asking
4 questions and answers and not referring to the
5 interrogatory.

6 I think that under the Board's procedures
7 that is what Mr. Freidin has to do; and not introduce a
8 new interrogatory because it does technically mean new
9 evidence before everyone can cross-examine.

10 So I think that if we are not going to
11 file all interrogatories with the Board as evidence,
12 then I think we are stuck with this situation.

13 MR. FREIDIN: Just to be -- I think you
14 had the right phrase when you were cross-examining Mr.
15 Douglas, different people make different decisions with
16 the same information or something. I think it could
17 apply here.

18 But, you know, the same problem could
19 happen, you know, with something else. Mr. Cosman may
20 file an interrogatory or ask an interrogatory, he may
21 get up, put in his whole case, not even mention this
22 particular answer that was given; Mr. Hunter could
23 cross-examine, and it could be devastating for my
24 client.

25 When do I get the chance to show that Mr.

1 Cosman's witnesses are telling a different story, you
2 know?

3 THE CHAIRMAN: Well, presumably you, Mr.
4 Freidin, get the wrap-up in reply. So, I mean, if you
5 see that that is happening as a result of the various
6 parties leading up to the end of the case, when you get
7 the shot at reply, I think you can protect your client
8 at that point in time.

9 MR. HUNTER: Mr. Chairman, I am trying to
10 put in what I think is a very simple proposition. Your
11 decision will be based upon the record that you have
12 before you.

13 We, as counsel, have to presume that your
14 analysis and your determination is based on that
15 material and on that material alone. Therefore, when
16 we prepare our final argument - I am looking down the
17 road, and I am not sure I appreciate Mr. Cosman's
18 argument - it seems to me, from my perspective, that if
19 I am going to deal with a question or an issue raised
20 in an interrogatory, whether mine or my friend's, I
21 have to get that before the Board as evidence, as an
22 exhibit.

23 Whether or not it is even dealt with in
24 cross-examination, although it seems to me to be a more
25 traditional analysis in terms of cross-ex, if you don't

1 touch the subject you cannot deal with it in subsequent
2 argument.

3 I am presuming that we are not holding
4 to the rigidity of that particular traditional
5 analysis. It does seem to me, however, to be very a
6 fundamental ground which is: If it isn't before you as
7 an exhibit or by way of evidence in terms of direct or
8 cross-examination, you cannot make reference to that in
9 your argument.

10 All of these interrogatories that are
11 sitting all over the place are of no use in terms of
12 argument prepared by counsel unless that interrogatory
13 is before you.

14 THE CHAIRMAN: Well, I think that is a
15 given, that the Board will make up its mind and its
16 decision based on the evidence before us, and it is not
17 evidence until it is admitted one way or the other as
18 evidence.

19 And, you know, we discussed at an earlier
20 time whether all interrogatories would be filed and,
21 therefore, become evidence or whether they would only
22 be put in by parties in the course of the case, either
23 in direct examination or, occasionally I suppose, in
24 cross-examination.

25 So I think you can be assured that the

1 Board will not be formulating its decision on anything
2 but evidence that is admitted as such.

3 MR. HUNTER: I was being a little
4 hyperbolic. My concern is exactly what has happened
5 today in re-examination, at least from my perspective,
6 new evidence is being introduced and we don't have a
7 chance to get at it.

8 I think it would be a very harmful thing,
9 suddenly when we get into argument and reply argument,
10 to suddenly see information being put before the Board
11 because of interrogatories that have been filed six
12 months, seven months, eight months beforehand and had
13 not been dealt with at any particular point in time.

14 MR. COSMAN: Mr. Chairman, isn't this a
15 very simple issue, and the only issue being: How do
16 answers to interrogatories become part of the record.

17 And when I have asked a question, or Mr.
18 Hunter has asked a question, are we entitled to file
19 that answer with you as part of the record. As I
20 understood it, of course you can, that's the whole
21 purpose of interrogatories, it saves time, and I don't
22 have to ask the questions at the hearing.

23 The only other serious question is: When
24 can I do it? I would ordinarily do it at the time that
25 my case was -- it was my turn to present my case and,

1 therefore, I could easily have stood up, as I follow
2 Mr. Freidin, and say: Mr. Chairman, before I am asked
3 to file -- I call my first witness, these are the
4 questions and answers that I am filing as part of my
5 case, and I could have questions and answers, including
6 the ones that we just dealt with.

7 That then becomes part of the record and
8 then I go on and I don't have to somehow re-ask the
9 question. It is a relatively simple process and
10 that's how I understood your ruling to be.

11 Perhaps further clarification of that
12 should be made by you just so that all parties are
13 aware of it.

14 THE CHAIRMAN: Mr. Castrilli?

15 MR. CASTRILLI: Mr. Chairman, having made
16 the suggestion earlier that Mr. Freidin file all
17 interrogatories at the commencement of the case, I
18 would suggest that the reason I suggested that is
19 because I was concerned about the issue of what would
20 constitute the record and what, in fact, would be
21 relied upon by parties and the Board at the end of
22 these hearings, some two years from now.

23 I am not wedded to the suggestion I made
24 earlier. As you know, I did file interrogatories I was
25 concerned about during the course of my

1 cross-examination, and that is my intention throughout
2 the remainder of this hearing. So that I would be
3 prejudiced by what is taking place today.

4 However, I can understand Mr. Hunter's
5 concern about how, in fact, the interrogatories came or
6 were about to come in this afternoon with respect to
7 questions that have been asked by him of Panel 1.

8 As long as it is not going to be
9 evidence - not evidence previously dealt with in
10 cross-examination, I would not want to see it come in,
11 by way of instinct, otherwise I would have no
12 difficulty with the procedures I understand the Board
13 has been following since February.

14 Let me just say I am not wedded to the
15 suggestion of Mr. Freidin filing all the
16 interrogatories at the commencement of each panel.

17 THE CHAIRMAN: Well, certainly I think
18 that the reason that the Board decided at the time, as
19 I understand it, not to have all interrogatories
20 automatically filed was because some of the matters
21 covered by those interrogatories would not be of
22 sufficient interest to any of the parties to
23 necessarily concern them so that they would be either
24 bringing witnesses in direct, when they are presenting
25 their own cases, or cross-examining on those questions

1 posed and the answers given to those questions posed.

2 And certainly we do not have to clutter
3 up the record, so to speak, with material that is of no
4 concern to anybody to the point that they do not want
5 to deal with it directly or in cross-examination.

6 But I do think that what we are faced
7 with here is this unusual situation that, as a result
8 of one party raising in cross-examination certain
9 issues which have been dealt with by a specific
10 interrogatory, at least in part, how do you get that
11 interrogatory in?

12 And Mr. Freidin, I think for lack of
13 another option, chose to try and bring it in at this
14 stage, although I think the Board does have some
15 sympathy with Mr. Hunter's position that since this
16 interrogatory, which was posed by him in the first
17 place, deals with his clients, he is somewhat prevented
18 from cross-examining at this stage because he has
19 already cross-examined. There would have to be another
20 cross-examination.

21 However, you also indicated that if these
22 were just filed at this point, you would just deal with
23 them at a later part in the case, specifically either
24 through your own evidence or in cross-examination of
25 another panel. So I think we can probably get around

1 this one instance.

2 What I am concerned about, I think to
3 some extent, is how do handle this again if the parties
4 do not choose to file it in either direct or
5 cross-examination and yet the questions are asked in
6 cross-examination that deal with the subject matter of
7 one of the interrogatories or the answers.

8 MR. HUNTER: Mr. Chairman, if I might. I
9 will not go back on my offer to deal with it, precisely
10 because the issues you are addressing are of very,
11 grave concern.

12 We can't compete with MNR. If they were
13 to choose 12 panels from now to take every single
14 interrogatory ever having been dealt with it and
15 suddenly file them, we couldn't deal with that issue.

16 And I think there ought to be some way to
17 ensure that if an interrogatory has been filed in
18 relationship to a particular panel, there is a clear
19 presumption that that interrogatory is dealt with by
20 that panel in either direct or in cross-examination.

21 THE CHAIRMAN: Whether or not it is
22 filed?

23 MR. HUNTER: That's correct, because what
24 I fear and my client's concern is that suddenly
25 interrogatories such as this one are going to sit

1 around in the weeds for three, four, six, nine or ten
2 months and then suddenly we are going to see it pop up
3 in some subsequent panel, either in direct evidence by
4 the proponent or, as in this instance, in
5 re-examination.

6 And I think that places - I won't speak
7 for Mr. Castrilli, but I will speak for my client -
8 that places us in an unholy position because we do not
9 then what to prepare for in relationship to each panel.

10 THE CHAIRMAN: Well, I think that is
11 certainly a concern of the Board.

12 Mr. Freidin, we have to find a way really
13 to prevent a lot of these interrogatories showing up
14 only by way of reply or only by way of re-examination,
15 and perhaps the fair way is that either the parties who
16 posed the interrogatories and have them answered --
17 either that is dealt with by the Ministry, the subject
18 matter of the interrogatories during direct examination
19 and/or cross-examination or, alternatively, in
20 re-examination you effectively go through the subject
21 matter of the interrogatories.

22 MR. FREIDIN: On re-examination or reply
23 evidence?

24 THE CHAIRMAN: Well -- sorry, reply, in
25 order to cover the material in there. Otherwise, I

1 think we are going to have these things bottled up at
2 the end, as Mr. Hunter says, and they are all going to
3 appear at the end and nobody has put them into evidence
4 at the appropriate time.

5 I do not see any other way of getting
6 around it without making a blanket order of filing all
7 interrogatories and I think that takes away, to a large
8 extent, the purpose of the interrogatories in the first
9 place.

10 MR. FREIDIN: I would be hopeful that
11 this sort of procedure would not occur very often.

12 MR. HUNTER: I don't think that's good
13 enough.

14 MR. COSMAN: All I would like clarified
15 is whether I am entitled, as part of my case, to file
16 answers to questions that other parties have asked
17 during interrogatories, or do I have to assume that
18 none of that is before you and ask all the questions
19 again live to the witnesses?

20 Because if I am entitled to do the
21 latter, it would save the Board a lot of time as to
22 things that were answered and when it is my turn to
23 present my case and say: I am filing interrogatories 1
24 through 7 and 1,422, rather than take...

25 If I am not allowed to do that, that

1 means I am going to have to ask the questions and get
2 those answers. That's the only question I need to know
3 in order to present my case.

4 MR. FREIDIN: You see, my problem was I
5 didn't know that there was going to be this allegation
6 or this suggestion that my client never spoke to the
7 native peoples during certain land use planning
8 exercises.

9 I mean, the question was asked and the
10 answer was given and the answer, as it is perceived by
11 my client - I wouldn't put it in otherwise - is in fact
12 there was contact.

13 Maybe in the Board's view not sufficient
14 contact, maybe in the Board's view the weight you want
15 to give to that evidence because you will see that it
16 refers to other documents and people said such and
17 such, it is a matter of weight that the Board will give
18 to it.

19 But I can't anticipate, particularly when
20 the answer, in my view, or my client's view was
21 positive, say: Well, I am going to just add all this
22 stuff into the case although I don't think it is really
23 an issue that should come up, and then it does come up.

24 You know, my understanding in putting in
25 a case is you try not to, to a great extent, anticipate

1 defense and I am trying not do that.

2 But, I am in your hands, Mr. Chairman.

3 THE CHAIRMAN: Well, certainly, there is
4 a difficulty. Let me try and explain it in these
5 terms.

6 A proponent puts in his case or any party
7 puts in their direct evidence and then they are cross-
8 examined by various parties. They cannot anticipate
9 all of the questions on cross-examination, quite
10 clearly, and when those questions come in, the party
11 putting in the case in the first place usually has an
12 opportunity to respond in re-examination, to deal with
13 questions that were raised solely on cross-examination
14 to which they had not dealt with effectively in their
15 direct examination.

16 Now, interjected into that is this
17 interrogatory process wherein we are trying to
18 accommodate, in many instances, parties who are not
19 present at the hearing itself; they are elsewhere, they
20 were following along in transcripts, they get witness
21 statements and they try to clarify positions in the
22 witness statements by posing questions and receiving
23 answers.

24 Now, the difficulty arises when those
25 interrogatories are not filed with the Board and,

1 therefore, they are not evidence before the Board.

2 Now, with respect, Mr. Hunter, it was
3 very difficult for Mr. Freidin to anticipate that Mr.
4 Colborne was going to spend a fair bit of time during
5 his cross-examination on the public participation
6 issue, notwithstanding that you had posed questions
7 along those lines in the interrogatories and answers
8 had been provided.

9 And it just seems to me that somehow we
10 have to fashion a fair way of making sure that those
11 answers can be before the Board in response to
12 questions raised on cross-examination; and I think we
13 are faced with the problem here that those answers are
14 contained in an interrogatory that was neither
15 introduced by you, Mr. Freidin, in the first instance;
16 nor introduced, frankly, by Mr. Colborne in
17 cross-examination. And, presumably, Mr. Colborne could
18 have filed this at some point during the
19 cross-examination as well.

20 MR. HUNTER: I think with respect to Mr.
21 Freidin's concern I have suggested, in order that we
22 may proceed, that I am not going to object to him
23 filing this today and examine on it in a later panel
24 and we will deal with some of these issues in direct.

25 I am not sure I can be helpful to the

1 Board with respect to the second issue; that is, I feel
2 quite strongly that either all interrogatories are
3 filed - which I don't think is a happy solution - or
4 that there is a very clear understanding that when it
5 comes to re-examination with respect to reply that
6 interrogatories, which were not dealt with in direct or
7 in cross, are not introduced at that time; and,
8 secondly, that interrogatories which, for example, are
9 dealt with in Panel 1 are not suddenly re-introduced in
10 Panel 10.

11 I don't know how my friend would deal
12 with that.

13 MS. SEABORN: I think, just to put it in
14 a slightly different way, Mr. Chairman, it seems to me
15 that during the course of the evidence, in any event,
16 interrogatories are in fact covered. Some of our
17 interrogatories from Panel 1 may or may not have been
18 covered and have slightly a different tone put on them
19 the way the evidence came in anyway.

20 I think the way that Mr. Freidin, or any
21 party in reply, has to deal with it is: If they want
22 to deal with the issue in reply is that they not
23 introduce a formal interrogatory, they can very well
24 ask the same question and get the same answer out of
25 the witness.

1 But I think that we are in the unhappy
2 position that if we are not going to file all the
3 interrogatories, that that is what someone in reply has
4 to do, is to say: Ah-hah, something twigs in their
5 mind that that question was dealt with in the
6 interrogatories, they still cannot formally put it in
7 as such in reply and I think that would apply to
8 everyone.

9 THE CHAIRMAN: You would have no
10 objections, Mr. Hunter, if those questions were put to
11 the panel in reply without the formal interrogatory
12 being filed, because certainly if it was raised in
13 cross-examination they could properly deal with it in
14 reply and put the same clarification question,
15 so-called, to the witness panel itself?

16 MR. HUNTER: I think that is always the
17 issue, what constitutes the line between clarification
18 and new, but what we are embarking upon is new
19 evidence.

20 It is hard to answer that in abstract. I
21 agree with counsel that, obviously, in re-examination
22 Mr. Freidin could have asked Mr. Monzon and Mr. Douglas
23 what their consultation was with Indians and they could
24 have gone on forever.

25 THE CHAIRMAN: And what form did it take.

1 MR. HUNTER: Yes.

2 THE CHAIRMAN: And they could have
3 effectively read out...

4 MR. HUNTER: Exactly, and I think you
5 would still have the same argument.

6 MR. FREIDIN: I am sure you wouldn't sit
7 there and listen for an hour while I took Mr. Monzon
8 through his experiences in attempting to do what he
9 said he had difficulty doing.

10 MR. HUNTER: That is for sure.

11 I think the fundamental concern is going
12 to be - and we are all counsel, we know the game - is
13 how many times is MNR going to try to re-try their case
14 and paper up, and that is fine, we are all going to try
15 it. So where is the line between legitimate
16 re-examination and leading new evidence and we are
17 going to fight about that a lot.

18 MR. FREIDIN: It seems, Mr. Chairman,
19 that the decision the Board has got to make really is:
20 Is there a right of cross-examination on this material
21 or isn't there.

22 If there isn't, then we just proceed; if
23 there is, then I suppose I would take the position that
24 the material has been filed and you should give it
25 whatever weight the Board feels appropriate having

1 regard to the circumstances perhaps and the method that
2 it got in and whose answer and whose question it was.

3 If there is a right to cross-examination
4 and Mr. Hunter exercised that right somewhere down the
5 road, then you can determine whether the weight that
6 you have given it or would give it should be altered,
7 and my client would have the opportunity to respond to
8 that cross-examination through reply evidence.

9 But I mean, it is a bit of both.

10 THE CHAIRMAN: But that is assuming that
11 they all go in, effectively. That is assuming that
12 they all go in.

13 MR. FREIDIN: They all being Question 1
14 and Question 3 as I -- yes.

15 THE CHAIRMAN: All right. I do not want
16 to take up any more time at the hearing. I think the
17 Board is going to have to reserve its decision on this
18 so that it can review its past ruling and also consider
19 what would be in the best interest of all the parties
20 and the Board with respect to this type of evidence.

21 And perhaps we can take a look at this at
22 the same time when the Board proposes to, a bit later,
23 look at some suggestions it had for trying to shorten
24 the evidence-in-chief.

25 MR. FREIDIN: You are trying to get back

1 at me, are you?

2 THE CHAIRMAN: And how this impacts upon
3 that, God only knows at this stage, but we will have to
4 take a look at it.

5 All right. Let's try and resolve this at
6 the moment. Can we have a basic agreement between
7 counsel that this particular interrogatory can come in
8 at this stage, reserving Mr. Hunter's right to
9 cross-examine on it or to deal with it in his own case
10 at a later date, and you are going to just bring it
11 through identification of this panel at this time.

12 Would that be acceptable, Mr. Freidin,
13 because this subject matter is going to be dealt with,
14 at least in part, later.

15 MR. FREIDIN: Yes, I am satisfied with
16 that again, as long as my client has the right to call
17 reply evidence depending on the cross-examination that
18 Mr. Hunter...

19 THE CHAIRMAN: Well, I think that is
20 going to depend on the use, I guess, that Mr. Hunter
21 makes of it at the later stage. I mean, you would
22 have the normal rights of reply depending on I guess
23 how Mr. Hunter treats it as we go along.

24 MR. FREIDIN: Let me put it a different
25 way: As long as my client isn't prejudiced by filing

1 it in the manner that I have suggested without going
2 through it item, by item, by item as Mr. Hunter
3 suggests is the option.

4 I mean, I want people to know where I am
5 coming from and I want to know where Mr. Hunter is
6 coming from as well.

7 THE CHAIRMAN: Well, do you have any idea
8 Mr. Hunter at this stage how you are going to approach
9 this particular interrogatory?

10 MR. HUNTER: I think, Mr. Chairman, we
11 were going to -- well, how do you argue this without
12 getting into evidence -- I think the key point would
13 be, for example, in relationship to some of the tribal
14 councils which, you know, that evidence would have to
15 be there; then we would have to identify who it was
16 that prepared these documents; we would want MNR to
17 identify those people, because they are making
18 statements about my clients and their relationship to
19 this particular West Patricia process, and I would be
20 asking questions in relationship to that.

21 I am presuming that Mr. Douglas - and
22 perhaps, I don't know, if Mr. Monzon - could not
23 address the specifics of this evidence. This goes back
24 to 1977, I think Mr. Monzon was in college then.

25 The question then is: Who prepared it,

1 and why was it prepared, and what does it indicate.
2 And then we will, in our case - just so my friend
3 knows - lead evidence in relationship to some of the
4 names of people who are named in this document, and we
5 will ask if their recollection of the communication was
6 accurate.

7 That is it.

8 THE CHAIRMAN: And you would be at
9 liberty at that point to cross-examine whatever
10 evidence was led--

11 MR. FREIDIN: Yes.

12 THE CHAIRMAN: --on those questions?

13 MR. FREIDIN: That's correct, yes.

14 THE CHAIRMAN: And you would have the
15 right of re-examination on anything led in
16 cross-examination?

17 MR. HUNTER: Yes, Mr. Chairman. The
18 other question is whether Mr. Freidin can deal with the
19 same subject in reply evidence.

20 MR. COSMAN: We can argue that when it
21 comes to that.

22 THE CHAIRMAN: Well, I am sure we will
23 have argument on that before we get to that point.

24 So can we handle this by just admitting
25 this one at this point for that limited purpose, to be

1 dealt with later on. I do not think you have to, at
2 this stage, go through it question-by-question.

3 MR. FREIDIN: Thank you, sir.

4 So, shall I continue then, Mr. Chairman?

5 THE CHAIRMAN: Very well. So are we
6 agreed that it is Exhibit 52. And sorry, Mr. Freidin,
7 Gogama District Land Use Guidelines, what...

8 MR. FREIDIN: That was one of the
9 documents attached to the answer to Question No. 3. It
10 can be part of the same exhibit.

11 THE CHAIRMAN: All right. So that will
12 be part of Exhibit 52.

13 ---EXHIBIT NO. 52: Duly filed as an exhibit as
14 described. (see pg. 1910)

15 THE CHAIRMAN: All right.

16 MR. FREIDIN: Q. Mr. Douglas have you
17 got a copy of the document that I have filed that has
18 just been filed as an exhibit?

19 I can give you an extra copy here if you
20 want, if it would you be helpful. (Handed)

21 Mr. Douglas, can you assist the Board as
22 to when that document was prepared? I am thinking now
23 of the 26 pages which outlines or says it describes
24 Excerpts of Main Events in Native Communities.

25 MR. DOUGLAS: A. I can't give you the

1 exact date. My understanding is that it was in the
2 first, oh, three or four months of 1983.

3 Q. And do you have any knowledge as to
4 why it was prepared?

5 A. It is a matter of documentation in
6 the planning process.

7 Q. Do you know whether it was prepared
8 for this particular Environmental Assessment?

9 A. No, because --

10 Q. No, you don't know; or no, it wasn't?

11 A. It was not prepared for this
12 Environmental Assessment, no, that is not my
13 understanding.

14 MR. FREIDIN: If our information becomes
15 any different than that, I will advise you, Mr.
16 Chairman.

17 Q. Mr. Douglas, in your evidence you
18 referred -- I'm sorry. Mr. Douglas could you take a
19 look at Exhibit No. 24 which is, I think, Chapter 8 of
20 the Fahlgren Report.

21 MR. DOUGLAS: A. Yes.

22 Q. Mr. Douglas, if you turn to page
23 8-14, you will see that there are four recommendations
24 made by Commissioner Fahlgren. They appear in a
25 section which begins on page 10, Public Participation

1 in Land Use Planning, and you will see that if you read
2 through that, when you get to page 8-13 there is
3 another heading called: Native Participation
4 Generally, and you go over to page 8-14 where there are
5 four recommendations relating to public participation.

6 Can you advise, has MNR taken any action
7 which addresses any of those recommendations and, if
8 so, in what way?

9 A. In terms of public participation in
10 general, we are formally building these requirements
11 into our resource management planning manuals for
12 fisheries, for timber.

13 Q. Are you referring to a specific
14 recommendation now?

15 A. No, not particularly. There are
16 recommendations - recommendations - there is
17 commitments in the timber management planning processes
18 to formalize this consultation. In terms of stronger
19 two-way dialogue, that is stressed in the document
20 which was provided to the Chairman called Resource
21 Management-Working Together, and that material...

22 Q. Mr. Douglas, what I am concerned
23 about, I don't want you to repeat your
24 evidence-in-chief, that is sort of the conversation
25 that we had for the last half hour or hour.

1 My question was: Can you refer to
2 anything -- can you advise whether any of those
3 particular matters have been addressed by the Ministry
4 and, if so, can you be specific?

5 A. Well, we have consolidated our
6 direction to staff in a public involvement statement
7 which was issued in February of this year which
8 stressed the need for two-way communication. That is a
9 specific action that we have taken, that I did not
10 describe earlier in my evidence.

11 We have also -- in terms of native
12 people, we have certainly put emphasis on trying to
13 have a better understanding of the culture and there
14 has been a number of -- there has been a seminar that
15 was put on so that we would appreciate the way the
16 native people viewed the world a little more than
17 perhaps we did in the past.

18 So these are attempts to come to grips
19 with that. So we have formalized a number of
20 procedures and we have tried to expand our
21 understanding and more effectively dialogue with all
22 people in the north.

23 Q. Now, Mr. Douglas, could you take the
24 witness statement -- those are my questions arising out
25 of Mr. Colborne's cross-examination.

1 And would you turn to page 220.

2 A. Yes.

3 Q. That particular page is entitled:

4 Optional Planning Approaches. Mr. Castrilli spent some
5 time with you on this particular page, and could you
6 advise what is meant by planning approach No. 1.

7 It says:

8 "Fully integrated resource management
9 planning."

10 What is that?

11 A. That would be a plan which would
12 outline the specific projects, the specific operations
13 to be carried out for a particular piece of land or
14 water, down to the level of detail that is identified
15 in the Timber Management Planning Manual.

16 In other words, you would have a document
17 which would indicate the very specific directions that
18 would be followed, taking into account all different
19 kinds of resource management interests; you would have
20 details in respect to water management - that could be
21 how you would operate the dam - the fisheries and
22 wildlife, you could have not only habitat protection
23 but you perhaps could have an outline of how much
24 effort would go into an enforcement program for the
25 fish and game laws.

1 Q. In brief, it would deal with all of
2 the various program objectives?

3 A. It would deal with all the program
4 objectives and it would identify all those specific
5 activities and projects to be undertaken in order to
6 implement or achieve those objective.

7 Q. In terms of timber management
8 planning, which of the options -- is the option that
9 was chosen identified in these series of tables?

10 A. That option would be No. 2, page 221.

11 Q. And is that the option -- is that
12 option described in the Timber Management Planning
13 Manual, is that method described in the Timber
14 Management Planning Manual?

15 A. Yes, it is. Yes.

16 Q. You were asked some questions by Mr.
17 Castrilli about not using the same map for planning all
18 resources.

19 A. Pardon, I didn't catch the question.

20 Q. Mr. Castrilli was asking you
21 questions about why you don't use the same map for
22 planning all resources and Mr. Castrilli asked: How do
23 you integrate where you don't use the same map L.

24 And you said there were a number of
25 points, and one of the points in your answer was:

1 Probably impossible to identify one geographical area
2 which is acceptable to all.

3 A. That's correct.

4 Q. What do you mean when you said
5 acceptable to all. What or who is all?

6 A. Well, that would include a number of
7 parties, if you wish. It could include the Ministry
8 staff, both from individual programs and, for example,
9 a district manager; it could include the various
10 stakeholders, whether they are the timber management
11 companies, the tourist operators, the angler and hunter
12 groups. They would all have a preference for one
13 geographical area for the other, and there would be
14 some coincidence among those, but there certainly
15 wouldn't be total agreement.

16 Some of the others are other government
17 ministries who have different administrative setups
18 geographically than our own.

19 Q. All right. My question is: Why do
20 you say it would be impossible to have any one map
21 acceptable to all?

22 A. Well, you would have to make the
23 decision on which one it is and that is the difficult
24 one because that would be making a tradeoff that would
25 satisfy not very many - I wouldn't say no one - but

1 there would certainly not be consensus on what that
2 unit would be.

3 And you would have people making plays
4 that it should be based on physical boundaries that are
5 easily identifiable on the ground, such as roads or
6 railway crossings. You would have other people saying
7 that it should be based on a combination of
8 institutional boundaries, whether it is MNR
9 administrative districts or MOE districts.

10 You would have some people making the
11 argument that it should be based on legal boundaries,
12 such as what are found in the timber -- are in the
13 timber licences. You would have others who would argue
14 that it should be based on watershed boundaries.

15 You would have a variety of people
16 arguing from a variety of points of view; each one
17 which makes good sense from their own perspective.

18 Q. Thank you. There was some discussion
19 about regional work plans and whether the Ministry
20 could identify or tell from a regional work plan, why
21 certain action to be taken and, in particular, whether
22 you could see how integrated resource management
23 may have occurred at this particular level of the
24 management system.

25 Do you remember that line of questioning

1 with Mr. Castrilli?

2 A. Yes, I believe it was directed at Mr.
3 Monzon, but I remember it.

4 Q. Well you said, I think, work plan is
5 based on how estimates are structured.

6 A. Yes.

7 Q. What does that mean, and could you
8 explain how that affects the ability to identify why
9 certain decisions were made in relation to integrated
10 resource management when you look at a regional work
11 plan?

12 We'll start it off by saying: What does
13 that mean; i.e., a work plan is based on how estimates
14 are structured?

15 A. Oh. What I mean by estimates, I am
16 talking about the formal estimates that go in front of
17 the legislature. Those estimates are broken down into
18 programs and activities within programs. For example,
19 outdoor recreation would be a program,
20 fisheries/wildlife would be an activity, parks and
21 recreational areas would be another activity.

22 Once there is a decision made by the
23 legislature that that is MNR's budget for the year, MNR
24 has constraints on being able to switch money from one
25 program to the other.

1 In other words, the legislature has
2 approved funding for a particular program or activity
3 and it is not in the discretion of the regional
4 director to start moving money around.

5 Q. And how does that have an effect on
6 whether -- the form of the regional work plan, if you
7 pick it up, I understood you to say you couldn't tell
8 why activity A was taken, whether it was taken in order
9 to accommodate concern B, and you suggested in your
10 evidence that that was based on how the estimates are
11 structured.

12 What is the connection between the two?

13 A. Well, it is the way these things get
14 built up and consolidated, that those linkages between
15 those projects that would go into one program and the
16 other wouldn't be obvious because we are required to
17 produce our information in a certain form that meets
18 the requirements of the legislature.

19 Q. And when you meet the requirements of
20 the legislature, is there an opportunity in this
21 document that you must be prepared to explain why you
22 are spending so much on activity X because of concern
23 Y?

24 A. Oh yes, there is certainly the
25 opportunity and, in fact, the Ministry estimates may be

1 starting tomorrow.

2 Q. So this is an annual process. Now, I
3 refer you to the Baskerville Report, Exhibit 16.

4 A. Yes.

5 Q. Can you turn to page 12, please. You
6 were referred to the first full paragraph on that page
7 which states that:

8 "A fundamental problem with the
9 integration of non-timber values in
10 the cases examined is that they are not
11 being managed towards any measurable
12 objective level. The non-timber values
13 entered the management planning process
14 as constraints to timber management
15 design and not as part of an objective
16 for forest management design."

17 That section was put to you by Mr.
18 Williams and you were asked to comment, and your
19 response included an explanation that all the decisions
20 regarding management of all resources are not made at
21 once.

22 Do you recall that evidence?

23 A. Yes.

24 Q. During your answer related to this
25 matter of objectives of various programs you said:

1 When you fit all these programs together they work
2 together.

3 My question is: What is the mechanism or
4 mechanisms through which these programs come together?

5 A. Well, in the preparation of these
6 various resource management plans, whether you are
7 talking about fisheries or whether you are talking
8 about timber or grass parks, we have an
9 interdisciplinary team.

10 In some cases -- well, in the case of a
11 timber management plan, the forestry program would have
12 the lead role and they would have the input from the
13 other programs and vice versa. When you are doing a
14 fisheries management plan, fisheries people would have
15 the lead and they would be seeking input from the
16 timber people.

17 So when you start adding up all this, you
18 will find in some cases the program will have a lead
19 role and, in other cases, they will have a support
20 role; but, in all cases, they will have a lead role in
21 particular reference to the plans that they are
22 preparing.

23 So even though, if you look at one single
24 plan, one could make the observation perhaps from the
25 perspective that Dr. Baskerville did, that is correct,

1 but if you start looking at all the plans, then that is
2 where you get the balance, and the key point is that
3 they all go through the district manager. So the
4 district manager has to make sure that there is a
5 proper reflection of all the concerns.

6 And, I guess, the other point I want to
7 bring in is this point of attitude. When we were
8 talking about integrated resource management, we
9 stressed the need for a positive attitude. If you look
10 singularly at one plan and you realize that the purpose
11 of that plan was to achieve that one particular
12 program, then if you weren't in that program you might
13 view it as: "a constraint", your program being a
14 constraint.

15 On the other hand, if you look at them
16 all, and when the staff realizes they all will have an
17 opportunity to input into plans of other programs,
18 everybody will have an opportunity to get into the
19 action, then I don't think it is viewed as a constraint
20 'I think it is viewed as, well, this person has the
21 lead today and when I do my plan I will have the lead,
22 and there is a reciprocal relationship.

23 Q. Ms. Seaborn asked you a question
24 beginning with -- she asked you a question that when
25 you have -- she was talking about tradeoffs.

1 A. Yes.

2 Q. And she asked you a question: When
3 you have people at this level - and I believe she was
4 talking about the resource management level - that
5 there will be a difference in the conclusions between
6 how to make tradeoffs.

7 Do you recall that line of questioning?

8 A. Yes.

9 Q. In the timber management planning
10 process, if there is disagreement between the members
11 of the team in these various different programs, is
12 there any method by which that disagreement could be
13 resolved?

14 A. Well, that is the job of the district
15 manager, to resolve those differences of opinion. That
16 would, of course, be at the end of the process when
17 everybody had had an opportunity of the input both from
18 the Ministry and from the various stakeholder groups.

19 Q. You were referred in your evidence to
20 a document at page 182 of the witness statement, that
21 is the Framework for Resource Management Planning in
22 MNR, the Procedure.

23 A. Yes.

24 Q. Mr. Douglas, some questioning
25 regarding mapping to identify locations of traditional

1 native uses. Mr. Colborne, you may recall, was
2 questioning you regarding Exhibit 5A which is that set
3 of correspondence which forms part of the Government
4 Review?

5 A. Yes.

6 MR. FREIDIN: I apologize, Mr. Chairman.

7 Q. He was asking you, particularly, some
8 questions about Attachment No. 2, he was questioning
9 you regarding the minimum checklist, and those are the
10 words used on the first page of the entire document.

11 You will notice under Area of Concern,
12 five lines down it refers to the minimum checklist?

13 A. Are you referring to the response to
14 MOE?

15 Q. Yes.

16 A. Okay. Okay, again, please?

17 Q. All right.

18 MRS. KOVEN: Excuse me, Mr. Freidin.

19 This is Exhibit 5A, the December 30th letter?

20 MR. FREIDIN: No. I believe I have only
21 got part of it. May the 5th, 1988 the letter from Mr.
22 Douglas to Mr. Posen. I apologize if that was part of
23 a larger exhibit.

24 THE CHAIRMAN: Do we have the correct
25 exhibit number, Mr. Freidin?

1 MR. FREIDIN: I think it was 5A.

2 THE CHAIRMAN: Supplementary
3 correspondence?

4 MR. FREIDIN: Yes. I am not sure, but
5 it might be that my first page doesn't correspond to
6 yours.

7 Q. But, in any event, there is a letter
8 in that exhibit dated May the 5th, 1988?

9 MR. DOUGLAS: A. Yes.

10 Q. That letter is from yourself to Mr.
11 Posen and Mr. Balfour?

12 A. Yes.

13 Q. Is there a page number on your copy?

14 A. The first page of that letter is No.
15 7 on what I have as Exhibit 5A.

16 Q. That's correct. All right. And at
17 what page do you find Attachment No. 2 to that letter?

18 A. Attachment No. 2 starts on page 13.

19 Q. Okay. So if I can ask you some
20 questions then about this document. There was
21 questioning regarding the minimum checklist of the
22 types of information that are normally assembled as
23 part of the background information for planning.

24 A. Yes.

25 Q. When is this information assembled in

1 relation to the beginning of any particular timber
2 management planning process.

3 A. That's at the beginning, the first
4 step.

5 Q. You indicate in Attachment No. 2,
6 page No. 13, that this information is assembled and
7 summarized in the form of a values map.

8 Is that going to be described -- a values
9 map going to be described by a later panel?

10 A. Yes, it will.

11 Q. Will you just give the Board an idea
12 of what a values map is so they don't have to wait
13 until Panel 15?

14 A. It would be a map which would
15 identify specific geographical areas that would be of
16 interest from various points of view or various
17 concerns. It talks about various resource features,
18 land uses and values.

19 Q. Are values maps referred to in the
20 Environmental Assessment Document?

21 A. I don't believe they are, but I would
22 have to change -- or check it.

23 MR. FREIDIN: Mr. Chairman, again I ask
24 you for your direction.

25 I can advise you of the pages, just for

1 your reference, there is going to be evidence led about
2 them, which is an area that I thought that the Board
3 could wait until Panel 15, but seeing that the subject
4 matter was raised about the mapping of uses, that it
5 would be helpful just to direct you to that particular
6 part of the document.

7 THE CHAIRMAN: Is there any objection by
8 any counsel?

9 (no response)

10 Go ahead.

11 MR. FREIDIN: All right. Well then, I
12 just refer you to page 114, lines 9 to 23.

13 MR. DOUGLAS: A. Yes.

14 MR. FREIDIN: And, Mr. Chairman, I am not
15 going to take the witness through these sections. I
16 just want to advise the Board that they are there.

17 Q. And that particular passage refers to
18 this values map and it indicates, I believe, the
19 principal role of that information at the bottom of the
20 paragraph, Mr. Douglas?

21 A. On page 114.

22 Q. Yes, starting on line 19.

23 A. Okay. The last sentence says:

24 "This information may contribute to the
25 identification of where timber management

1 operations may or will be carried out
2 during the 20-year period, the 5-year
3 term of the timber management plan
4 respectfully. The principal role of that
5 information contributes to the
6 determination of areas in which
7 comprehensive planning in timber
8 management operations is required to
9 ensure consideration of other resource
10 features, land uses and values."

11 Q. Does it matter whose concern it is as
12 to whether it gets mapped?

13 A. No.

14 Q. These values maps are mandatory in
15 the Timber Management Planning--

16 A. Yes.

17 Q. --Manual, or the process, I am sorry?

18 A. Yes, they will be mandatory.

19 Q. Mr. Colborne - I am going to deal
20 with another area now - Mr. Colborne asked you some
21 questions, Mr. Douglas. He asked whether the Ministry
22 ever thought of implementing some formality or form to
23 let people appeal decisions which were made.

24 Do you remember that line of questioning?

25 A. I believe this was in respect to the

1 land use planning.

2 Q. I believe my understanding was it was
3 more general. Perhaps -- my understanding is it was
4 more general than that, Mr. Douglas.

5 A. Okay.

6 Q. Is there any mechanism in the nature
7 of an appeal provided to people who are not satisfied
8 with a decision made during the preparation of a timber
9 management plan?

10 A. Yes, there is the opportunities for
11 bump-up.

12 Q. What is bump-up?

13 A. It is the designation of all or part
14 of the plan to an individual environmental assessment.
15 The exact procedures and the explanation of that would
16 be provided by another panel.

17 Q. Will we find a description of those
18 bump-up provisions at pages 177 to 180 of the
19 Environmental Assessment Document?

20 A. There is a section in there -- which
21 page again, please?

22 Q. 177 to 180.

23 A. Yes.

24 Q. Those will be spoken to by Panel 15?

25 A. Yes.

1 Q. You described briefly what a bump-up
2 is. Who asks for a bump-up? I want to ask you some
3 very basic questions.

4 A. They could be asked by anyone. It
5 could be asked by a particular group who didn't think
6 their interests were being properly taken into account,
7 it could be asked for by the Ministry of Environment,
8 perhaps they didn't believe that the planning process
9 was properly followed, it could be by a timber
10 management company who didn't like the amendments that
11 MNR made to a plan they may have submitted.

12 So it is wide open.

13 Q. Of whom is the request made?

14 A. That is made to the Minister of the
15 Environment.

16 Q. Who decides whether a bump-up request
17 will be granted?

18 A. It is the Minister of Environment. I
19 believe that that request would go to Cabinet, though,
20 I am not certain on that.

21 Q. All right. If a bump-up request is
22 granted, what occurs to the plan or part of the plan
23 which is the subject of the bump-up?

24 A. It would have to be redone.

25 Q. And what is redone and what is done

1 with the thing that's redone?

2 A. One would have to prepare an
3 individual assessment for that particular plan or the
4 component of that plan that was in dispute.

5 Q. It could end up, depending on what
6 happened, in a hearing like this?

7 A. Yes. What the difference would be is
8 that it would have to have a clearly stated purpose:
9 Alternative to, alternative methods, as well as a lot
10 of the -- as well as all the normal requirements, and
11 that would go through the same process as this one has.

12 Q. Mr. Edwards was asking you about
13 bump-up and he described something as a tourism
14 reserve. Do you remember that line of questioning?

15 A. I believe so.

16 Q. He asked whether an area of a tourism
17 reserve was an area for bump-up, and he asked you if
18 specific concerns about such a reserve existed, would
19 that situation be appropriate for a bump-up.

20 And your answer was: It would have to be
21 considered, but whether a bump-up occurred would depend
22 on how a particular issue or problem was dealt with.

23 A. Yes.

24 Q. What would be the effect -- why would
25 you have to look at how a particular issue or problem

1 was dealt with?

2 A. Well, The Minister of Environment has
3 the discretion to grant this bump-up request and he
4 would want to assess the circumstances in which that
5 request was made.

6 Q. Does the Environmental Assessment
7 Document identify any situations where the Minister of
8 the Environment, in exercising his discretion, would be
9 bound to grant a request the bump-up of a portion or
10 all of a timber management plan to individual
11 environmental assessment status?

12 A. I would have to check the document.

13 Q. You are unable to...

14 A. I believe it does not set any
15 preconditions on the Minister of Environment.

16 MR. FREIDIN: If our information becomes
17 differently, Mr. Chairman, we will advise.

18 THE CHAIRMAN: That is a matter of
19 statute anyway; is it not?

20 I mean, is not the Minister given certain
21 rights under the Environmental Assessment Act and if he
22 is given a discretion in the Act, I do not think anyone
23 could fetter it anyway.

24 MR. FREIDIN: I know, but that's why the
25 answer was there is nothing in the document.

1 I just thought that through the
2 questioning of certain people that it was something
3 that I wanted to put on the record.

4 Q. Mr. Colborne also asked you some
5 questions about whether advice is given by the Ministry
6 of Natural Resources to the public regarding their
7 right to appeal decisions.

8 Is there any commitment by the Ministry
9 of Natural Resources regarding the existence of the
10 right to bump-up being brought to the public's
11 attention in any way?

12 MR. DOUGLAS: A. I believe that has been
13 or will be incorporated in some of the notice
14 requirements.

15 Q. If I could refer you to page 263 of
16 Exhibit 5, which is the Government Review.

17 A. Yes.

18 Q. The first full paragraph. Is that
19 a commitment by the Ministry of Natural Resources in
20 terms of how it will deal, in part, with the bump-up
21 provisions?

22 A. Yes. It states that MNR will ensure
23 that a standard wording of provisions for bump-up will
24 be included all public notices related to preparation
25 of timber management plans, plan amendments, and annual

1 planning or protection operations.

2 Q. Am I correct that the original
3 document did not provide for a notification of bump-up
4 for all public notices, but rather only for the last
5 notice for inspection of an approved timber management
6 plan?

7 A. That is my understanding, although
8 there were a number of changes, so I am not sure of
9 that, but I believe so.

10 Q. Could you go to page 165 of the
11 Environmental Assessment Document.

12 A. Yes. Yes, I have it.

13 Q. Does that indicate -- sorry, I can't
14 direct you to the actual line to where it deals with
15 bump-up. Line 18, sorry.

16 Is that the provision regarding notice or
17 opportunities for bump-up?

18 A. Yes. It says the public notice will
19 clearly indicate the opportunity for inspection,
20 provides a final opportunity for interested
21 participants to request a bump-up on a timber
22 management plan or component of that...

23 Q. So that information would have to be
24 in the public notice?

25 A. Yes.

1 Q. Do you know why the change was made?

2 A. To add clarity. And the other thing
3 would be that it perhaps is useful to identify these,
4 let's say, serious concerns earlier in the planning
5 process as opposed to waiting to the plan being almost
6 complete and ready to file.

7 Q. All right. Mr. Colborne, again to
8 you, Mr. Douglas, put a hypothetical to you, he asked
9 you whether if someone comes into the Ministry office
10 after the fact concerned about the width of a reserve
11 around a particular lake and was asked if there was any
12 documentation as to why that decision had been made.

13 And you said that there would be
14 documentation.

15 A. Yes.

16 Q. Is the approach to that documentation
17 and the requirement to produce that documentation, or
18 to prepare that kind of documentation described in the
19 Environmental Assessment Document?

20 A. Yes, it is. There is a specific
21 section called documentation that starts on page 165,
22 identifies what that documentation is. There is also
23 supplementary documentation in itself which is in the
24 subsection of that.

25 Q. And this requirement for

1 supplementary documentation will be addressed by Panel
2 15?

3 A. Yes.

4 Q. Will they also be describing or
5 dealing with Appendix 1 and 2 to the document which
6 deals with the planning procedures for access roads in
7 areas of concern?

8 A. Yes.

9 Q. They will also be dealing with the
10 planning procedure for modified operations in areas of
11 concern?

12 A. Yes.

13 THE CHAIRMAN: Is there anything that
14 Panel 15 won't be dealing with, Mr. Freidin?

15 MR. FREIDIN: Almost nothing.

16 Q. Is there a difference between
17 background information and supplementary documentation?

18 MR. DOUGLAS: A. Well, the background
19 information would normally be referenced in the
20 supplementary documentation, it is not necessarily the
21 same thing.

22 Usually you would find that background
23 information would be a component of supplementary
24 document.

25 Q. Okay.

1 A. At least the reference to it anyway,
2 so that someone else could go to another source and
3 find where that information came from.

4 Q. Why would you refer to background
5 information in the supplementary documentation?

6 A. Just to make it clear so someone can
7 follow the process.

8 Q. Thank you.

9 THE CHAIRMAN: Mr. Freidin, I think we
10 are going to take another break shortly.

11 • MR. FREIDIN: And I promise that I will
12 finish in about fifteen minutes.

13 THE CHAIRMAN: You are going to finish
14 with this panel in fifteen minutes.

15 Okay. Why don't we go for the fifteen
16 minutes and let you finish off the panel, then we will
17 take a break, and then we will come back and I would
18 like to put forward the Board's proposal and then we
19 will probably end for the day, rather than going on to
20 the next panel.

21 MR. FREIDIN: Q. Mr. Edwards was asking
22 you some questions, Mr. Douglas, about tourism
23 guidelines.

24 MR. DOUGLAS: A. Yes.

25 Q. How that document was prepared, will

1 that be the subject matter of a later panel?

2 A. Yes, I understand it will be.

3 Q. Will that panel be describing who was
4 involved in the preparation of the document?

5 A. Yes, I believe so.

6 Q. Can you advise whether that evidence
7 will be that Mr. Edwards' client, the Northern Ontario
8 Tourist Outfitters were involved in the preparation of
9 that guideline?

10 A. Oh, they definitely were.

11 Preparation of that guideline was sort of the new
12 direction by the Ministry in which the Ministry had the
13 two groups that had the greatest stake in the outcome
14 of the forest industry and the tourism industry work
15 together to develop the document.

16 We acted as assistants to that working
17 group and hired a consultant to act as a facilitator
18 for that process.

19 Q. And Mr. Edwards was asking you
20 questions about reserves around lakes and there was a
21 discussion about 400 feet, 600 feet, a hundred feet,
22 all kinds of different widths -- I am sorry, Mr.
23 Colborne put to you a question; he said: Where is the
24 mirror image -- I am sorry, let me go back.

25 If you go to page 242 of the witness

1 statement.

2 A. Yes.

3 Q. We have that particular document

4 Integration of Other Resource Values in Timber

5 Management, that was the document that was superseded?

6 A. Yes.

7 Q. And there was some discussion about

8 that. Mr. Colborne was asking you some questions about

9 that document and he asked you whether there was a

10 mirror image of this policy, and he was saying: Where

11 does it say that you can have a 600-foot reserve as

12 opposed to a 400-foot reserve which was prescribed in

13 certain documents.

14 A. yes.

15 Q. And you answered: In the tourism

16 guidelines it deals with this on a case-by-case basis.

17 Do you remember giving him that answer?

18 A. Yes.

19 Q. I am going to show you a document

20 entitled Timber Management Guidelines for the

21 Protection of Tourism Values, and this is a document

22 which will be spoken to at much greater length by

23 another panel; is that right?

24 A. Yes.

25 Q. I am going to ask you to look to page

1 36 to 40, Section 3.4 entitled: Defining Reserve
2 Boundaries, and can you tell me whether that was the
3 section that you were referring to?

4 A. Yes, that section deals with the idea
5 of variable width boundaries.

6 THE CHAIRMAN: Are you going to be
7 putting that in at a later time?

8 MR. FREIDIN: I would just as soon put it
9 in it in right now. It's a document - I can hand it
10 out to everybody. I just want to -- again, I realize
11 that some of this re-examination is going a bit further
12 than I normally would go, but I just want to get some
13 of this...

14 THE CHAIRMAN: Let's hear from Mr.
15 Edwards.

16 MR. EDWARDS: I wouldn't have any
17 objection to that, Mr. Chairman, it is going to be
18 going in eventually, but can Mr. Freidin tell us which
19 panel is going to be giving evidence on that?

20 THE CHAIRMAN: Probably 15.

21 MR. FREIDIN: No, not 15.

22 MR. HUNTER: Mr. Chairman, I am sorry. I
23 don't want to get into a brawl with Mr. Edwards, but I
24 just really have a hard time seeing how the proponent
25 can, in re-examination, just bring in an exhibit.

1 MR. FREIDIN: All right, I will withdraw
2 it, I don't want to file it.

3 THE CHAIRMAN: Okay.

4 MR. EDWARDS: Mr. Chairman, can Mr.
5 Freidin still tell me which panel.

6 MR. FREIDIN: I will tell you during the
7 break. I can't recall exactly which one, it is not 15.

8 THE CHAIRMAN: Okay, for the purposes of
9 the record, that will not be exhibited at this time, it
10 will be brought in and properly put in through the
11 panel which is called to deal with it.

12 MR. FREIDIN: Q. Mr. Douglas, I want to
13 make sure that - Mr. Douglas or Mr. Monzon was asked
14 this question by Ms. Seaborn talking about refinements
15 being made to the District Land Use Guidelines or the
16 Strategic Land Use Plans and Guidelines - one of you
17 indicated that there may be refinements required to a
18 District Land Use Guideline or Strategic Land Use Plan,
19 or at that level, based on something that happened
20 during timber management planning.

21 Do you recall that evidence? I think it
22 was you, Mr. Douglas.

23 MR. DOUGLAS: A. Yes, yes.

24 Q. Must the District Land Use Guideline
25 be amended or changed before you can do something

1 different than what the guidelines indicate?

2 A. It depends on how significant it is.
3 Anything significant you would have to have an
4 amendment to the District Land Use Guidelines and that
5 amendment process would go on probably simultaneously
6 with production of the timber management plan.

7 Q. Okay. In respect to a hypothetical
8 put to you by Ms. Seaborn, she asked you whether there
9 were reasons beyond MNR's mandate that may in fact lead
10 to a decision not to cut timber, a certain stand of
11 timber.

12 A. Correct.

13 Q. And you said yes and you referred to
14 her client, the Ministry of the Environment, perhaps
15 having some concern.

16 Does the Ministry of Natural Resources do
17 anything to obtain those possible views of non-MNR
18 individuals or groups?

19 A. Yes. In the preparation of the
20 planning document and all the stages, notice goes to
21 the various ministries. Certainly there is on-going
22 dialogue with those ministries as well.

23 So we would start off early in the
24 process assembling the information that we had from
25 those other ministries, we would go and check with them

1 to make sure that we were up to date whether we had
2 missed something or not.

3 Q. What about non-government agencies or
4 groups?

5 A. There would certainly be the
6 opportunity for them to comment on the material that we
7 assembled and to indicate to us whether it was up to
8 date or complete.

9 MR. FREIDIN: Thank you. Those are my
10 questions, Mr. Chairman.

11 I can advise Mr. Edwards that Panel 8
12 will introduce the guidelines -- the Tourism
13 Guidelines.

14 THE CHAIRMAN: Thank you.

15 Very well, Panel, I think that concludes
16 your testimony.

17 --- (Panel withdraws)

18 THE CHAIRMAN: The Board will rise for
19 about 20 minutes and then we will return and deal
20 shortly with --

21 MR. EDWARDS: Mr. Chairman, I want to be
22 called on to give our response to timber versus forest,
23 of course. I have an urgent matter at the office that
24 requires that I leave.

25 So in light of that, I can either advise

1 you tomorrow or advise you next --

2 THE CHAIRMAN: Are your comments going to
3 take very long?

4 MR. EDWARDS: No.

5 THE CHAIRMAN: All right. Perhaps we
6 will deal with them right now.

7 MR. EDWARDS: Okay.

8 Mr. Chairman, after consulting with my
9 client I think the position that is taken with respect
10 to the scope of the environmental assessment is similar
11 to the one taken on the first day; that is to say, that
12 this is a very wide-ranging examination.

13 The Ministry of the Environment, I think,
14 put it well indicating that other resource
15 considerations are fully examinable because of the fact
16 that there may be impacts beyond the narrow timber
17 considerations everything really could be considered;
18 and the Board, quite appropriately, could impose terms
19 and conditions which would try to deal with all
20 environmental concerns, that would include the issue of
21 what areas, if any, might be appropriate for not having
22 timber extraction.

23 I am comforted in the evidence of Mr.
24 Monzon in that this really is a distinction without a
25 difference; that forest and timber really does not have

1 a vastly different meaning.

2 Mr. Monzon, in his cross-examination by
3 Mr. Castrilli, said that forest management was
4 synonymous with the term timber management and I --

5 THE CHAIRMAN: At least for the purposes
6 of this hearing.

7 MR. EDWARDS: Yes, for the purposes of
8 this hearing, and it would be our position further --
9 he asked him about the alternatives that were
10 available.

11 The Ministry of Natural Resources came up
12 with several alternatives to the timber management plan
13 including the almost unimaginable, scarcely believable
14 do-nothing approach, yet they didn't seem to think that
15 forest management was even a potential alternative.

16 So if it is not even a potential
17 alternative to the innovative minds of the MNR, I
18 presume that it does not exist as a separate category
19 for timber management, and we would accept that.

20 Certainly the fact that there are other
21 users in the forest, it would be our position that the
22 Board has full authority to deal with all of their
23 concerns in a very wide-ranging fashion.

24 Those are my submissions. Thank you.

25 THE CHAIRMAN: Thank you.

1 When we come back, Mr. Castrilli, can we
2 start off with you and then we will finish off this
3 issue, and then the Board will put forward its
4 proposal.

5 MR. CASTRILLI: Yes, Mr. Chairman. I
6 will be very brief.

7 THE CHAIRMAN: Thank you.

8 We will break for 20 minutes.

9 ---Recess at 5:10 p.m.

10 ---Upon resuming at 5:35 p.m.

11 THE CHAIRMAN: Thank you, ladies and
12 gentlemen. Please be seated.

13 Mr. Castrilli?

14 MR. CASTRILLI: Thank you, Mr. Chairman.

15 I just very briefly wish to deal with
16 this issue because, for the most part, the position of
17 my client is already set out in the opening statement.

18 And I would refer you in this regard to
19 page 225 of Volume II, the May 11, 1988 transcript at,
20 as I indicated, page 225, lines 2 through 15, and that
21 statement continues to be our position.

22 I just wanted to add that because the
23 Ministry is seeking approval under the Environmental
24 Assessment Act the statute, as you know, defines
25 environment extremely broadly and, as a result, we

1 believe the statutory requirements would compel the
2 Ministry to manage timber so as not to detrimentally
3 affect the forest environment and other uses of the
4 environment.

5 And so, therefore, their proposal must
6 deal with those two matters and, as a result, it is the
7 view of my clients that MNR must ultimately satisfy you
8 that its timber management proposal constitutes
9 environmentally-sound forest management.

10 In this light, therefore, we expect that
11 the evidence that we intend to adduce on other resource
12 or non-timber values which, for example, may be
13 adversely impacted by timber management operations will
14 be, of course, admissible and also any evidence we may
15 wish to adduce with respect to alternatives which,
16 apparently in this case, will include forest management
17 as well.

18 THE CHAIRMAN: As they impact on the four
19 activities for which the Ministry is seeking approval?

20 MR. CASTRILLI: And then vice versa.

21 THE CHAIRMAN: And vice versa.

22 MR. CASTRILLI: And, finally, it is my
23 client's position that any deficiencies we may regard
24 as existing in the proposal of the Ministry can be
25 remedied by your panel in its Final Report through

1 terms and conditions.

2 I would note one caveat in that regard;
3 the issue of the change in geographic area of the
4 undertaking which was raised by Mr. Hunter on his
5 submissions on this point earlier in May, is something
6 that I believe is in a different category and that I
7 believe can also be dealt with by you, as appropriate,
8 before the end of the hearing.

9 Those are essentially our submissions on
10 that point.

11 Thank you.

12 THE CHAIRMAN: Thank you.

13 Okay, ladies and gentlemen. I want to
14 now proceed on to a brief discussion of this proposal
15 that I indicated the Board might put forward with
16 respect to the expediting of evidence-in-chief.

17 As you are aware, the present hearing is
18 estimated to take several months and the presentation
19 by the Ministry of Natural Resources of their
20 evidence-in-chief and corresponding cross-examination
21 will be lengthy by reason that there is a great deal of
22 evidence to cover, there is going to be a lot of
23 evidence produced by various panels and, as I
24 understand it, there are 18 or 19 panels that are going
25 to be involved.

1 We have taken a look at some of the other
2 institutions elsewhere that have handled evidence in a
3 manner that has been slightly different than the way
4 the Environmental Assessment Board has usually handled
5 this type of evidence. And what we are going to
6 suggest is for your consideration and we do not
7 necessarily expect that parties are going to
8 wholeheartedly agree, at least without discussion, and
9 we are going to suggest that perhaps you consider it
10 and maybe we can deal with this on Wednesday or
11 Thursday of this week.

12 And it is this: We are going to suggest
13 that commencing with a particular witness panel further
14 down the line - because certain witness statements have
15 already been served - that there be consideration that
16 witness statements submitted by parties represented by
17 counsel and receiving full-time correspondence be filed
18 and be considered that panel or witnesses comprising
19 that panel's evidence-in-chief, and that the parties
20 submitting the evidence in this form be allotted a
21 maximum time of perhaps two hours or three hours of
22 oral direct examination for the purposes of
23 highlighting or summarizing the evidence-in-chief which
24 has been submitted in the written form.

25 Now, the Board would consider granting

1 exemptions to this proposal where it feels that the
2 submission of written evidence-in-chief is prejudicial
3 to particular witnesses or to particular parties who
4 may be accustomed to communicating primarily in an oral
5 fashion; in other words, those who are not used to
6 preparing witness statements, those who may not be
7 represented by counsel who could put those witness
8 statements in a form that would be - I will not say
9 concise - but contain the evidence that counsel wanted
10 to be before the Board.

11 Using this format, interrogatories would
12 be submitted in a normal fashion as previously directed
13 by the Board and the party who is putting forward their
14 evidence-in-chief through a written statement would
15 provide the witnesses for cross-examination and
16 re-examination in the normal fashion.

17 So, in other words, we are only looking
18 at this proposal as a possible method of expediting the
19 evidence-in-chief. The witnesses would be available
20 for cross-examination and the witnesses would be
21 available for re-examination.

22 We are suggesting that the party
23 submitting written evidence-in-chief, in accordance
24 with this type of directive, would submit the witness
25 statements in accordance with the time frames

1 previously established by the Board and they would go
2 to all of the parties designated as parties receiving
3 full-time correspondence and would be filed or
4 deposited at all of the locations serving as transcript
5 depositories for the hearing.

6 And, again, we are trying to look at a
7 method by which parties who cannot attend on a
8 full-time basis would be apprised of the
9 evidence-in-chief before the Board.

10 At the moment they are apprised of that
11 if they are not here by looking at the transcripts;
12 they would also be apprised of that by looking at the
13 actual witness statements themselves, and the
14 transcripts would provide those parties with an account
15 of the cross-examinations that have taken place on
16 those witness statements, and then a certain number of
17 copies of the witness statement would be served with
18 the Board, again, in accordance with the time frame set
19 out in the Board's procedural directive previously
20 issued.

21 So I guess what we are trying to propose,
22 and what we would like to put out for your
23 consideration, is this: Rather than having witness
24 statements exchanged in the normal fashion and then a
25 party calling the witness panel and leading them

1 through the witness statements in a lot of detail over
2 several days, the parties would put the witness
3 statement - which would contain their
4 evidence-in-chief - before the Board by filing it with
5 the Board and then they would highlight, within a given
6 time frame, that evidence.

7 And then the other parties would be able
8 to cross-examine on anything contained in the witness
9 statements, not just the issues highlighted, because
10 what is contained in the witness statement would, in
11 effect, be the evidence-in-chief of that party
12 submitting the statements.

13 And it seems to us that many of the
14 issues in controversy will be brought out as a result
15 of the cross-examinations. Those parties who have and
16 who take issue with anything in the witness statements
17 would certainly be exploring that, I would suspect in
18 cross-examination, and there would be no time limits,
19 of course, on cross-examination in terms of whatever
20 the parties felt that they want to deal with; provided
21 it was not repetitious and provided it was appropriate
22 for any other reason to go into, it would be allowed in
23 the normal course.

24 And, again, the interrogatory process
25 would also be available to clarify anything that might

1 be contained in the witness statements themselves.
2 What we are primarily looking at is to, use the
3 colloquial term, provide for a certain amount of
4 "canned evidence", in the sense of it going in by way
5 of written statement and yet allowing full
6 cross-examination on that evidence and trying to make
7 it available to parties who cannot otherwise be present
8 on a full-time basis.

9 And it is our belief that if this
10 procedure were adopted in conjunction with the other
11 procedure that was previously put forward and, that is,
12 where there is non-controversial evidence, that an
13 agreed statement of facts can be agreed to by the
14 full-time parties, those two procedures might
15 substantially shorten the presentation of the evidence
16 for not only the proponent but other parties as well.

17 We would take pains to ensure that no
18 party, who would not ordinarily be subject to witness
19 statements in the first place, would be bound by this
20 process; that is, unrepresented parties and, in some
21 cases, parties who are used to communicating orally as
22 opposed to in some written form.

23 Now, I know that this is a somewhat
24 unorthodox proposal, I know that many of you who are
25 used to our type of hearing might find it to be

1 somewhat unusual, but I think we all have a duty to
2 look at whatever procedures we can devise to try and
3 expedite the giving of evidence. And I can assure you
4 that when these statements would be filed with the
5 Board, the Board, as would be the case with the other
6 full-time parties at least, would be reading the entire
7 statements; it would be evidence before the Board, the
8 Board would be cognizant of it. The fact it wasn't
9 highlighted in terms of the oral address limited to
10 some specific time limit would not mean that the Board
11 would not be considering it.

12 So that, ladies and gentlemen, is the
13 gist of this proposal. It has been used in various
14 forms, I think, by other tribunals and it has been used
15 to a certain extent by courts and other institutions.

16 So what I think what we are trying to do
17 in this case is fashion something that is fair to the
18 parties, allows all of the evidence to come before the
19 Board that should properly be before the Board, and
20 allows parties a full and vigorous cross-examination.

21 And the party calling the evidence or
22 putting in the evidence, by way of the witness
23 statement, would also be allowed the right of
24 re-examination as well on matters arising out of
25 cross-examination; it would not be a matter of

1 splitting your case, and so we would not expect the
2 party on re-examination to put in everything that had
3 gone in in the written form in the first instance.
4 Again, they would again be restricted to matters
5 arising out of cross-examination.

6 Although I am sure that some of you will
7 want to consider this at length, you may have some
8 preliminary comments to make at this time.

9 I see Mr. Cosman getting ready to jump up
10 and say something, so perhaps you could lead off.

11 MR. COSMAN: No comments, Mr. Chairman.

12 A couple of questions perhaps for our
13 assistance. We support anything to expedite the
14 proceedings here, I can assure you of that.

15 I have two questions arising out of the
16 procedure that is proposed and I am also experienced
17 with canned evidence-in-chief before other types of
18 tribunals.

19 One: You said interrogatories would
20 still be used for purposes of clarification. I am not
21 sure that I understand how this would be so and perhaps
22 now, or some other time, you might be able to assist
23 us. In other words, if I ask questions or if Mr.
24 Hunter asks questions and Mr. Castrilli, for example,
25 without having to ask -- without having to repeat those

1 questions, takes those questions and answers and files
2 those as part of his case, can that be done? That is
3 the first.

4 Do you want me to state the questions, or
5 perhaps we can just deal with them ad seriatim, if you
6 wish.

7 THE CHAIRMAN: Why don't we just sort of
8 have an informal discussion as they arise.

9 We are going to have to take this
10 proposal in the light of our previous discussions over
11 the use of the interrogatories because, as I mentioned
12 at the time the earlier discussion came up, our
13 proposal may change things slightly with the
14 interrogatories.

15 But it was our view at the outset that
16 the interrogatories provide two functions, essentially:
17 One, they help clarify what is in the witness
18 statements for the parties, and it may be that the
19 answers provided then take an issue out of contention,
20 so to speak and, therefore, it may not even be referred
21 to in any cross-examination, or referred to further by
22 the proponent; that is, using the old system where the
23 witnesses are giving oral testimony.

24 But, more importantly, perhaps the
25 interrogatories were a way, in this particular hearing,

1 for parties who are not normally present day-to-day to
2 be able to clarify matters which they might have
3 otherwise been able to clarify had they been here by
4 either cross-examining or -- well, normally by
5 cross-examining, and it affords them a way to register
6 some of their concerns over the statements and obtain
7 the answers.

8 Now, under this proposal I do not think
9 that would substantially change. In other words, the
10 witness statements would be deposited in the various
11 locations, parties away from the hearing could submit
12 interrogatories and receive answers. What may have to
13 change is what happens to those interrogatories at that
14 stage: Do they then get automatically filed with the
15 Board so that they are before the Board as part of the
16 evidence in case they are not addressed in
17 cross-examination?

18 What we are proposing here, effectively -
19 except for a highlighting of the direct evidence - is
20 foregoing the direct evidence in favour of the written
21 form, and the written form might have to take into
22 account the interrogatories as well.

23 MR. COSMAN: I guess, in that respect,
24 would the parties - either someone here or someone who
25 isn't here - have the option of filing it or not,

1 because that becomes important?

2 I may choose not to ask questions of a
3 witness because I already have the evidence through the
4 interrogatory procedure. Now, I can either - if I know
5 that I can't file it, then I will ask the questions
6 again. If I can only file it if I have asked the
7 questions in interrogatories - just because Mr.
8 Castrilli has asked the questions, I am going to have
9 to ask the questions again because I can't file his
10 questions and answers.

11 In my respectful submission, what you
12 should consider is allowing any party - other than the
13 party answering the question - to file, at his option,
14 such questions and answers in context as that party may
15 deem appropriate.

16 THE CHAIRMAN: In what sense, in their
17 own case?

18 MR. COSMAN: As part of their case, as
19 part of the evidence. In the same sense when I have
20 done a multi-party litigation where, if I'm examining
21 Mr. Hunter's client on that examination, Mr. Hunter
22 can't file that examination, but I can as part of my
23 case. The only difference here is, because we have so
24 many parties, do we all have to ask the same questions,
25 or could we file answers to the questions that someone

1 else asks?

2 THE CHAIRMAN: I think the definite
3 advantage to allow other parties to file the
4 interrogatory, rather than just the party who posed
5 them, is that it facilitates the dissemination of the
6 information to everybody, particularly in the unusual
7 circumstance that not everyone is before the Board. I
8 mean, not everyone is physically present in front of
9 the Board to stand up and ask the questions.

10 MR. COSMAN: And also save the Board the
11 time of having to listen to my questions again when
12 just as easily I could have filed the questions and
13 answers that Mr. Castrilli obtained.

14 THE CHAIRMAN: Right. And that is a
15 different question as to the timing of introducing the
16 interrogatory such as perhaps not doing it in
17 re-examination.

18 MR. COSMAN: Yes, that's right. It can
19 be filed at the end of one's case as it often is.

20 The second question is with respect to
21 the exemption you referred to. I am not sure if I
22 understood it correctly.

23 You indicated that the Board would grant
24 exemptions when written answers would be prejudicial to
25 parties accustomed to communicating in an oral fashion.

1 Given that we are talking here only with parties
2 represented by counsel who are clearly able to
3 communicate in a verbal fashion in terms of -- in the
4 sense that counsel assist their witnesses with the
5 witness statement, what are you contemplating?

6 I am just looking around the room. Are
7 we talking about the native peoples' tradition, or--

8 THE CHAIRMAN: Yes.

9 MR. COSMAN: --or are we talking about
10 anyone else? Are you just doing it for purposes of
11 clarification?

12 THE CHAIRMAN: I think to some extent
13 what the Board had in mind were, obviously, some of the
14 native peoples - and I think we have heard some
15 evidence to that effect - sometimes feel more
16 comfortable putting in their evidence in an oral
17 fashion as opposed to putting it in in a written form,
18 notwithstanding that certain native peoples are
19 represented by counsel who would not have that same
20 difficulty in putting their client's case in in a
21 written form.

22 But, to some extent, I think the Board
23 has to take into account as well the resources of the
24 various parties, because if the evidence is going in
25 and it is going to be constituting their

1 evidence-in-chief, obviously it is going to have to be
2 a fairly detailed and fairly - I won't say complex -
3 but certainly an inclusive statement of the evidence
4 that that party wants to put before the Board in-chief,
5 and there may be situations where some parties do not
6 have the resources on a full-time basis to be able to
7 produce that kind of witness statement which would then
8 constitute the evidence-in-chief, at least to the same
9 extent as other parties.

10 Now, in addition to that, you are going
11 to get a number of parties who are either unrepresented
12 completely or represented partially; i.e. on a
13 part-time basis - they have counsel, but counsel cannot
14 be here very often and is basically fulfilling the role
15 of a watching brief on the proceedings, in general -
16 and there might have to be some exceptions there.

17 But, certainly, if this policy were
18 adopted, we are talking about many of the full-time
19 parties who are here at this time, or have been for the
20 past two or three weeks.

21 It certainly would apply to the Ministry,
22 the proponent, and it would apply to the Ministry of
23 the Environment and, I would suggest, it would probably
24 apply, maybe with partial exception, to Mr. Hunter's
25 clients, and Mr. Castrilli would probably fall in that

1 category.

2 MR. CASTRILLI: Mr. Chairman, if I might,
3 I was wondering if I might make a suggestion, although
4 I suppose I should keep my comments to Wednesday after
5 I have had an opportunity to speak to my clients.

6 Firstly, I think in general we support
7 the proposal you have put forward. I was going to
8 suggest that, in our experience in other tribunals
9 where canned evidence has been used, it has been
10 limited to those witnesses who are being qualified as
11 experts than might otherwise apply to, if I can use the
12 term, lay witnesses.

13 THE CHAIRMAN: No, and I think that is
14 right, I do not think it should apply necessarily to
15 lay witnesses because, frankly, they are not accustomed
16 to putting in their evidence necessarily in a written
17 form. And sometimes their evidence is not of a
18 constant nature, sometimes their evidence comes in by
19 way of a submission, sometimes it comes in by way of a
20 position, sometimes it comes in by way of clarification
21 of various issues,

22 But, certainly, I think there is going to
23 be many panels dealt with in this hearing who are going
24 to be comprised, essentially, of expert witnesses, of
25 what we have constituted to be expert witnesses who are

1 used to formulating their thoughts in terms of reports,
2 and, let's face it, there is fairly wide latitude even
3 under the Board's Rules of Practice as to what
4 constitutes a witness statement, and many of you will
5 know that often witness statements contain reports of
6 experts suitably interlinked with other evidence.

7 But I think what I am saying is that we
8 will have to look carefully at the situation and
9 perhaps, on an ad hoc basis, make some rulings with
10 respect to specific parties. But, certainly, we can
11 get enough, I would suspect, of the major parties into
12 the category where a proposal like this would be
13 worthwhile and, certainly in the long-run, save a great
14 deal of time in terms of putting forward the
15 evidence-in-chief.

16 MR. FREIDIN: And I just want to be able
17 to follow the suggestion about service of documents.

18 Are you suggesting that if this procedure
19 was adopted that the more detailed, comprehensive
20 witness statement would be made available or filed with
21 all of the depositories where the transcripts are now
22 now deposited?

23 THE CHAIRMAN: Right.

24 MR. FREIDIN: What about -- does the
25 proposal contain any suggestion as to whether or not

1 people who are not full-time correspondence parties,
2 would they then be expected to get this witness
3 statement?

4 THE CHAIRMAN: Well, I am not sure we
5 have gone quite that far, Mr. Freidin, in our thinking,
6 but certainly we felt that if the evidence-in-chief
7 were not available in terms of the transcript itself
8 because the witnesses were not examined orally, it
9 should be available to those parties who would normally
10 be looking at the transcripts for the
11 cross-examinations. And so it should go to all of the
12 depository drops for the transcripts.

13 Certainly all of the full-time parties
14 would get the witness statements, as they do in any
15 event and it may be that others on the party list
16 should get them, I am not sure we followed that through
17 yet.

18 Do not forget it is a two-edged sword:
19 you would be saving -- presumably the Board and the
20 parties themselves would be saving, hopefully, a
21 considerable amount of time in limiting, in this
22 fashion, the evidence-in-chief.

23 There may be a corresponding dis-saving
24 perhaps to some of the parties in having to distribute
25 in a wider fashion the statements, but I think it is

1 important, again, that as many people as possible are
2 apprised of the evidence-in-chief in one form or
3 another.

4 If it does not come in the form of
5 transcripts - these are the ones who are not here -
6 then maybe it is going to have to come in some other
7 form, but it may be enough to leave it on depository.

8 MR. FREIDIN: And I apologize if I am the
9 only one who didn't quite follow your comments to Mr.
10 Cosman, but you did indicate that how the
11 interrogatories would be dealt with may depend on what
12 arrangements you finally came up with.

13 But assuming that the arrangement that
14 you ended up with is the one you proposed, did you have
15 a specific suggestion as to how the interrogatories
16 would be dealt with differently, if at all, than to
17 date?

18 THE CHAIRMAN: Well, I think the Board
19 would probably - and, again, this is subject to our
20 conversations earlier today, to our discussions earlier
21 today about the whole issue of interrogatories - and we
22 want to go back and take a look at our previous ruling
23 and sort of get our thinking straight on the whole
24 question.

25 But, presumably, the interrogatories

1 would be available to be introduced by any party, not
2 just the one that posed them, in the course of their
3 case -- presentation of their case; as well as, of
4 course, the person that posed them when that person
5 presents their case before the Board, but not
6 necessarily in re-examination where nobody else raised
7 them.

8 MR. FREIDIN: And, as part of their case,
9 for instance: What Mr. Castrilli did, he just filed
10 all of the questions and the answers that he got, that
11 would be in your terms then, part of Mr. Castrilli's
12 case?

13 Is that...

14 THE CHAIRMAN: Well --

15 MR. FREIDIN: I just want to be clear,
16 when you say, filed as part of your case, the thing
17 that pops to my mind is, when you are calling your
18 witnesses, but I understand that...

19 THE CHAIRMAN: No, I do not see any
20 reason why the interrogatories could not be used in
21 terms of the cross-examination of a particular party as
22 well.

23 MR. FREIDIN: Yes, that's fine.

24 THE CHAIRMAN: And followed through, that
25 when Mr. Castrilli comes along to present his own

1 evidence he might well introduce at that point an
2 interrogatory that had not been previously introduced
3 through your own witnesses.

4 MR. CASTRILLI: Mr. Chairman, I am just
5 wondering if I can obtain one clarification as to
6 distribution of the figuratively improved, canned
7 evidence; would that be limited to those parties
8 receiving full-time correspondence?

9 THE CHAIRMAN: Well, that is not quite
10 what we have settled upon or considered fully.

11 Certainly it would go to all of the
12 parties receiving full-time correspondence. We are
13 suggesting that the statements would also be deposited
14 in any depository for transcripts, and those are the
15 some 35 across the province.

16 Whether or not they would go to the other
17 30 some odd parties on the party list who are not now
18 receiving full-time correspondence, is another
19 question. It may well be that those parties would be
20 obliged to go to the transcript drops to see that
21 evidence as well. And I guess the rationale for that,
22 to some extent, is: That is what they have to do now
23 to look at any cross-examinations or any of the direct
24 examinations that may appear in the transcript.

25 MR. CASTRILLI: So at a minimum, a party

1 filing canned evidence would have to reproduce
2 approximately 50 or so copies of that document?

3 THE CHAIRMAN: That is what you might
4 consider the downside. The upside would be that you
5 would be spending, hopefully, a lot less time at the
6 hearing itself in terms of being around for the
7 evidence-in-chief going in in the normal fashion.

8 Do you have anything, Mr. Hunter?

9 MR. HUNTER: Mr. Chairman, I think that
10 seems somewhat abstract. I know the intent and concern
11 that you are addressing. I am not convinced that it is
12 going to accelerate the process simply because it seems
13 to me that, by and large, the proponent would then have
14 to spend an extraordinary amount of time in preparing
15 their written documentation.

16 And I am just concerned about how much
17 more time they are going to have to spend in preparing
18 that written documentation over and above the time that
19 they do now, and that's something Mr. Freidin and his
20 colleagues can answer.

21 My concern is or would be that would be a
22 substantial problem that they would have to face
23 because they would have to look at it and dot every "i"
24 and cross every "t" and that is distinctly something
25 they could deal with in direct evidence. I am not sure

1 that it is a solution, but perhaps --

2 THE CHAIRMAN: But if they did not deal
3 with it in direct evidence and it was a matter in
4 controversy, would it not come out in
5 cross-examination?

6 MR. HUNTER: Well, there is no necessary
7 guarantee of that, there is no absolute to that.

8 I mean, I am directing our case in a
9 certain way, Mr. Castrilli in his own way, and Mr.
10 Colborne in his way. That's something that obviously
11 Mr. Freidin has to answer.

12 MR. FREIDIN: It is a point which -- it
13 is something which is bothering me and of some concern.
14 I just am not saying anything now because I want to
15 have the opportunity to reflect on exactly what I do
16 want to say, or what my client wants to say, but I have
17 the same concern as does Mr. Hunter.

18 THE CHAIRMAN: Well, I think the Board
19 would like all parties to take seriously these
20 suggestions and see, in the course of your
21 deliberations, how it might apply to your specific
22 clients and your specific positions.

23 It seems to us that there is a great deal
24 of evidence that is produced in any event, a lot of
25 which is not referred to specifically in oral testimony

1 anyways. I mean, we have filed a great number of
2 reports, we have received in evidence a great number of
3 reports and a great number of documents, and the Board
4 will be looking at this evidence carefully in
5 formulating its own decisions.

6 It does not prevent you from
7 highlighting, to a large extent, certain areas and I do
8 not think it prevents you really from dealing with
9 certain areas in dispute in detail in
10 cross-examination.

11 I guess what I am saying is, is that it
12 is a method used by other tribunals in certain context;
13 it is used essentially to shorten the hearings and to
14 leave the hearing process itself to deal with those
15 issues in dispute, those areas in cross-examination --
16 that the parties would normally cross-examine on.

17 And, frankly, that is where we feel that
18 time spent at this hearing could be better served, by
19 allowing the parties to fasten in on those areas of the
20 evidence that they disagree with or which are in
21 dispute and spend the time in cross-examination, as
22 opposed to spending several days and several weeks in
23 direct examination, particularly when much of the
24 information, it appears in this case, is before us
25 anyway in a written form.

1 And I guess what we are suggesting, Mr.
2 Freidin, is it definitely may necessitate your looking
3 a bit down the road and seeing how you will change or
4 amend any witness statements you have already produced
5 that have not yet been presented or exchanged, but you
6 may find that, after consulting with your clients, it
7 can be done without any major prejudice to your side of
8 the case.

9 I think -- let me end it for now and we
10 will deal with it perhaps on Wednesday or Thursday of
11 this week, but I think it is incumbent upon all of us
12 to try and expedite this process in areas where no one
13 is substantially prejudiced.

14 MR. HUNTER: Mr. Chairman, if I might. I
15 will be here for a short time tomorrow and, with
16 respect to Mr. Cosman's questions about the use of
17 interrogatories, I am working from the assumption that
18 we can adopt, in final argument, those questions and
19 those answers in interrogatories filed with the Board
20 and that evidence obtained, or that evidence led and
21 adduced in cross-examination by another party.

22 If I am incorrect in that --

23 THE CHAIRMAN: I think that would be the
24 case, if the interrogatory is properly before the
25 Board; it forms part of the evidence and you can

1 address, I would suspect, any of the evidence in
2 argument.

3 MR. HUNTER: Just because Mr. Cosman
4 asked the question about how other parties might be
5 leading evidence, we intend to lead some professional
6 expert evidence and that will be part and parcel and
7 integrated with evidence given by native people in some
8 type of panel form.

9 Some of that may be introduced in English
10 and some of it may be in Ojibway; so, from our
11 perspective, I can't say whether it is 50 per cent or
12 60 per cent, but certainly with respect to Mr.
13 McKibbon's evidence, to whatever degree possible, we
14 will try to present a witness statement.

15 But because his evidence will be so
16 integrated with the native community activities, we
17 can't say, you know, if it will be in the witness
18 statement in the fashion you have described.

19 THE CHAIRMAN: Okay. It is in those
20 situations that we may have to specifically adopt any
21 policy of this nature too.

22 MR. HUNTER: If I might just ask for your
23 indulgence, Mr. Douglas and Mr. Monzon. In my
24 cross-examination, Mr. Chairman, I asked Mr. Monzon and
25 Mr. Douglas to provide certain information to the Board

1 and they stated that they would.

2 When will you be dealing with those
3 issues?

4 THE CHAIRMAN: Well, Mr. Castrilli also
5 mentioned the matter of undertakings as well. Is this
6 in the form of an undertaking?

7 MR. HUNTER: Well, I wouldn't put it --
8 yes, understanding.

9 THE CHAIRMAN: Well, Mr. Freidin, how are
10 we going to handle the question of outstanding
11 undertakings?

12 In other words, as you know, in the first
13 panel certain undertakings were given from time to
14 time; I know that you have provided some information to
15 the parties. I think we agreed previously that when
16 you provided the information to the parties you would
17 also advise the Board.

18 But what about the information that you
19 agreed to produce and has not yet been produced? I
20 understand from Mr. Castrilli there is a category of
21 that nature.

22 MR. FREIDIN: I think the discussion we
23 had the other day was that we were going to have to
24 provide those answers and, as a result of Ms. Seaborn's
25 suggestion, we would have to file those answers with

1 the Board so everybody would have an opportunity to see
2 what those answers were.

3 In terms of when --

4 THE CHAIRMAN: I guess the question is
5 when, right.

6 MR. FREIDIN: Well, I told Mr. Castrilli
7 that I can't give him an exact date. I would want it
8 to be sooner as opposed to later, and I prefer to do it
9 sort of almost all at once as opposed to piecemeal.
10 So...

11 THE CHAIRMAN: Well, Mr. Castrilli, are
12 you going to allege some prejudice if you do not get
13 specific answers by a specific time?

14 MR. CASTRILLI: No, Mr. Chairman.

15 THE CHAIRMAN: Given the fact that
16 regardless of what proposal we adopt you are going to
17 be some ways down the road yet, I would suspect.

18 MR. CASTRILLI: No, I am not going to
19 allege prejudice. However, I would like to reserve my
20 right to bring a motion before the Board to request Mr.
21 Monzon and Mr. Douglas to return to answer questions
22 arising out of the material to be filed that arose from
23 the undertakings.

24 THE CHAIRMAN: I think if something
25 arises as a result of information that you agreed to

1 produce that you were not able to produce earlier, that
2 you should be in a position, if necessary, to provide
3 the witnesses to be recalled.

4 MR. FREIDIN: Well, I think Mr. Castrilli
5 should be at liberty to bring any motions in that
6 regard that he feels is appropriate, if we disagree
7 about whether we think it is appropriate to recall
8 somebody.

9 THE CHAIRMAN: Okay.

10 MR. CASTRILLI: It is quite possible that
11 the information provided by Mr. Freidin will be
12 satisfactory and we will simply deal with it in our
13 case, but I will have to wait and see.

14 THE CHAIRMAN: Okay.

15 Ladies and gentlemen, perhaps just so we
16 do not leave this up in the air, can we set a
17 convenient time to deal with this proposal so that the
18 parties know, and I am sure we will be in the middle of
19 Panel 2's evidence or Panel 3's evidence by then and we
20 will just have to set some time aside anyways.

21 Would Wednesday afternoon be convenient,
22 later in the day?

23 MR. FREIDIN: I would prefer that it
24 be -- if it is going to be this week, that it be
25 Thursday.

1 THE CHAIRMAN: Thursday. All right.

2 Would Thursday be acceptable to the
3 parties here?

4 (No response)

5 All right. Since we are leaving
6 Thursday, why don't we set aside the beginning of the
7 day to deal with this and I think Thursday we will be
8 starting, in all probability, at 8:30 a.m.

9 So we will put this down for Thursday at
10 8:30 a.m.

11 Anything further?

12 MR. CASTRILLI: I am sorry, Mr. Chairman.
13 Just so that I understand what our obligations are one
14 or two years from now. If I am correct -- perhaps I
15 could simply ask for your clarification.

16 What would have been my client's
17 obligations in terms of the filing of evidence when it
18 presents its case; exactly who would have to receive
19 that evidence, so that I know how the new proposal
20 would change this or if it would change it?

21 THE CHAIRMAN: Well, what we are
22 suggesting at the minimum would be all full-time
23 parties, all parties receiving full-time
24 correspondence, and the depositories which are now
25 receiving transcripts.

1 MR. FREIDIN: 25.

2 THE CHAIRMAN: Is that the number?

3 MR. FREIDIN: I think 25 is the number.

4 THE CHAIRMAN: I think that is probably
5 at the very -- at the minimum.

6 Whether we would also insist upon those
7 being served upon parties not receiving full-time
8 correspondence, I think we would want to hear further
9 argument on, and I am not convinced personally that
10 that would be necessary in any event.

11 MR. CASTRILLI: I am sorry, Mr. Chairman,
12 so even without -- in other words, the current
13 situation is if I was presenting my case today, I would
14 have to file approximately 44 copies?

15 MR. MANDER: No, 18.

16 MR. FREIDIN: Maybe if I can just tell
17 you what we have to do which is, I suppose, what you
18 would have to do is: We have to file or serve 19
19 parties with our witness statements, all right, plus
20 the Board's.

21 THE CHAIRMAN: Yes, plus the drop, plus
22 the -- what we are suggesting is plus the --

23 MR. FREIDIN: Oh yes, but what you are
24 suggesting though now is that now whereas we have to
25 deposit transcripts with 25 depositories - or whatever

1 you want to call them around the province - this
2 suggestion would require that those particular
3 locations also receive a copy of the witness statement
4 because there would be no transcript of that evidence.

5 So you can look -- you would be looking
6 towards 19 plus 25, plus whatever copies - I guess it
7 is four or five - with the Board.

8 Any else?

9 MR. MANDER: I think that's it.

10 MR. FREIDIN: I think that's about it.

11 THE CHAIRMAN: That would be it.

12 I suppose the Board could also look at -
13 perhaps we will between now and then - to see if there
14 is any way the Board could assist in helping parties,
15 other than perhaps the Ministry or the ministries,
16 since there is more than one, with providing this type
17 of information at the transcript depositories. Maybe
18 there is.

19 In which case, if that were the case, Mr.
20 Castrilli, you would be no worse off than you are
21 today.

22 Okay. I think in view of the hour --
23 sorry.

24 MS. SEABORN: Mr. Chairman, one other
25 procedural thing that came to mind. Before we broke

1 last week or the week before, there was a discussion
2 that there was formally going to be a discussion on
3 site visits at some point.

4 THE CHAIRMAN: That's right. And, as I
5 understood it - and perhaps this should be clarified in
6 the not too distant future - we were going to take the
7 first week of July, or at least some of the days of the
8 first week of July, to embark upon a series of site
9 visits.

10 And, as I understood it, Mr. Freidin, you
11 were indicating that the Board and those parties
12 accompanying the Board on the site visits would be away
13 from Thunder Bay for some of those days, we would not
14 be returning every night.

15 And you also indicated that you would be
16 consulting with the other parties as to where we should
17 go and what we should be seeing on this first series of
18 site visits.

19 MR. FREIDIN: Well, we haven't consulted
20 with any other counsel yet, but I understand that Miss
21 Murphy hopes to have a number of proposals this week to
22 discuss with other counsel.

23 I am not involved with putting together
24 that particular proposal, so I can't really be any more
25 definite than that.

1 THE CHAIRMAN: Okay. Well, I think what
2 we should be doing fairly soon though is: We should be
3 at least establishing that we will, in fact, be going
4 the first week of July on site visits.

5 I am sure we can sort out the details one
6 way or the other as to where we should be going and
7 what we should be seeing, but I think the Board would
8 like to know that for that week we are going to not be
9 in the regular hearing and we are going to be away.

10 MS. SEABORN: That was my concern, Mr.
11 Chairman, because it is only a month.

12 THE CHAIRMAN: That's right. So you
13 ascertain that fairly quickly and, hopefully, by the
14 end of this week at least be able to ascertain that Mr.
15 Freidin?

16 MR. FREIDIN: Yes.

17 THE CHAIRMAN: Very well.

18 Anything further?

19 Very well, we will adjourn tomorrow until
20 9:30 a.m.

21 Thank you.

22 ---Whereupon the hearing adjourned at 6:25 p.m., to
23 reconvene on Tuesday, June 7th, 1988, commencing at
24 9:30 a.m.

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E R R A T A

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VOLUME I

4

5

<u>Page</u>	<u>Line</u>	<u>Corrections</u>
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6

78	15	"adversaries" should read: "adversities"
115	24	"fish for that bait" should read: "fish or cut bait"
116	21	"derogatory" should read: "laudatory"
116	25	"being" should read: "having"
136	25	"it raised a question" should read: "I raised the question"

9

10

VOLUME II

11

239	17	delete word "over"
242	15	"problems in participation" should read: "problem and participation"

12

13

VOLUME VIII

14

15

1315	20	"combine" should read: "come by"
1317	19	word "by" should be inserted after word: "understand"
1318	12	"approach" should read: "approached"
1338	16	word "that" following the word "process" should read: "if"
1341	4	"a formal" should read: "formalize"
1344	23	"water rescourse" should read: "petroleum resources"
1345	5	"I" should read: "it"
1364	4	"and" should read: "an"
1371	22	"accurate" should read: "active"
1372	18	delete word "am"
1377	4	"That may" should read: "Then may I"
1377	5	"ability" should read: "anxiety"
1377	20	delete words "Mr. Monzon"
1379	25	"agreed to" should read: "equal"
1380	16	insert the words "part of" after the word "is"
1384	18-19	"sub an" should read: "sub-set and"
1385	3	"area" should read: "dairy"
1394	6	insert word "out" after word "work"

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ERRATA (Cont'd)

<u>Page</u>	<u>Line</u>	<u>Corrections</u>
1395	8	words "your own" should read: "the"
1396	1	"a" should read: "the"
1398	9	"bottom line of" should read: "bottom line or"
1412	21-22	first word "brings" should read: "bringing"
1421	25	"projected" should read: "rejected"
1423	12	"trivial" should read: "peripheral"
1426	15	"1:00 p.m." should read: "1:45 p.m."

